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IN FOUR VOLUMES

EDITED BY
JAMES M. KERR

VOLUME TWO

CIVIL CODE

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CIVIL CODE.

AN ACT TO ESTABLISH A CIVIL CODE

[Approved March 21, 1872.]

The people of the state of California, represented in the senate and assembly, do enact as follows:

TITLE OF THE ACT.

§ 1. This act shall be known as the Civil Code of the State of California, and is in four divisions, as follows:

I. The first relating to persons.

II. The second to property.

III. The third to obligations.

IV. The fourth contains general provisions relating to the three preceding divisions.

History: Enacted March 21, 1872.

PRELIMINARY PROVISIONS.

§ 2. When this code takes effect.
§ 3. Not retroactive.
§ 4. Rules of construction.
§ 5. Provisions similar to existing laws, how construed.
§ 6. Actions, etc., not affected.
§ 7. Holidays.
§ 8. Same [repealed].
§ 9. Business days.
§ 10. Computation of time.
§ 11. Certain acts not to be done on holidays.
§ 12. Joint authority construed.
§ 13. Words and phrases, how construed.
§ 14. Certain terms defined.
§ 15. Good faith, what constitutes [repealed].
§ 16. Degrees of care and diligence [repealed].
§ 17. Degrees of negligence [repealed].
§ 18. Notice, actual and constructive.
§ 19. Constructive notice. [When deemed.]
§ 20. Effect of repeal.
§ 21. This act, how cited.

§ 2. WHEN THIS CODE TAKES EFFECT. This code takes effect at twelve o'clock noon on the first day of January, eighteen hundred and seventy-three.

History: Enacted March 21, 1872.

§ 3. NOT RETROACTIVE. No part of it is retroactive, unless expressly so declared.

History: Enacted March 21, 1872.

§ 4. RULES OF CONSTRUCTION. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the sub-

jects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

History: Enacted March 21, 1872; amended by the Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 332; amendment declared unconstitutional in Lewis vs. Dunne, 134 Cal. 291, 86 Am. St. Rep. 257, 66 Pac. Rep. 478, 55 L. R. A. 833. See Code Civ. Proc., Pt. I, Introductory note.

§ 5. **PROVISIONS SIMILAR TO EXISTING LAWS, HOW CONSTRUED.** The provisions of this code, so far as they are substantially the same as existing statutes or the common law, must be construed as continuations thereof, and not as new enactments.

History: Enacted March 21, 1872; amended March 16, 1901, Stats. and Amdts. 1900-1, p. 332; unconstitutional, see history, § 4 ante.

§ 6. **ACTIONS, ETC., NOT AFFECTED.** No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions.

History: Enacted March 21, 1872.

§ 7. **HOLIDAYS.** Holidays within the meaning of this code, are every Sunday, the first day of January, the twelfth day of February to be known as Lincoln day, twenty-second day of February, thirtieth day of May, fourth day of July, ninth day of September, first Monday in September, twelfth day of October, to be known as "Columbus day," twenty-fifth day of December, every day on which an election is held through [out] the state, and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday.

If the first day of January, twelfth day of February, twenty-second day of February, the thirtieth day of May, the fourth

day of July, the ninth day of September, the twelfth day of October, or the twenty-fifth day of December falls upon a Sunday, the Monday following is a holiday.

Every Saturday from twelve o'clock noon till twelve o'clock midnight is a holiday as regards the transaction of business in the public offices of this state, and also in political divisions thereof where laws, ordinances or charters provide that public offices shall be closed on holidays; this shall not be construed to prevent or invalidate the issuance, filing, service, execution or recording of any legal process or written instrument whatever on such Saturday afternoons;

[Public schools.] And provided further, that the public schools of this state shall close on Saturday, Sunday, the first day of January, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December and on every day appointed by the president of the United States or the governor of this state for a public fast, thanksgiving or holiday. Said public schools shall continue in session on all other legal holidays and shall hold proper exercises commemorating the day. Boards of school trustees and city boards of education shall have power to declare a holiday in the public schools under their jurisdiction when good reason exists therefor.

History: Enacted March 21, 1872; amended 1880, Code Amdts. 1880 (C. C. pt.), p. 9; 1889, Stats. and Amdts. 1889, p. 47; 1893, Stats. and Amdts. 1893, p. 186; 1897, Stats. and Amdts. 1897, p. 14; March 18, 1907, Stats. and Amdts. 1907, p. 565, Kerr's Stats. and Amdts. 1906-7, p. 399; February 19, 1909, Stats. and Amdts. 1909, p. 23; March 27, 1911, Stats. and Amdts. 1911, p. 520.

§ 8. SAME [repealed].

History: Enacted March 21, 1872; repealed by Code Commission amendment of March 16, 1901, Stats. and Amdts. 1900-1, p. 332; held unconstitutional, see history, § 4 ante; repealed, Act Feb. 20, 1905, Stats. and Amdts. 1905, p. 11.

§ 9. **BUSINESS DAYS.** All other days than those mentioned in section seven are to be deemed business days for all purposes.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 332; held unconstitutional, see history, § 4 ante; amended Feb. 20, 1905, Stats. and Amdts. 1905, p. 11.

§ 10. **COMPUTATION OF TIME.** The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

History: Enacted March 21, 1872.

§ 11. **CERTAIN ACTS NOT TO BE DONE ON HOLIDAYS.** Wherever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

History: Enacted March 21, 1872.

§ 12. **JOINT AUTHORITY CONSTRUED.** Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

History: Enacted March 21, 1872.

§ 13. **WORDS AND PHRASES, HOW CONSTRUED.** Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the

succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

History: Enacted March 21, 1872.

§ 14. **CERTAIN TERMS DEFINED.** Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; county includes city and county; writing includes printing and typewriting; oath includes affirmation or declaration; and ["testify"] every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and ["depose"] every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it, by a person who writes his own name as a witness; provided, that when a signature is by mark it must, in order that the same may be acknowledged or may serve as the signature to any sworn statement, be witnessed by two persons, who must subscribe their own names as witnesses thereto. The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. **The word "property"** includes property, real and personal;

2. **The words "real property"** are coextensive with lands, tenements, and hereditaments;

3. **The words "personal property"** include money, goods, chattels, things in action, and evidences of debt;

4. **The word "month"** means a calendar month, unless otherwise expressed;

5. **The word "will"** includes codicil;

6. The word "section," wherever hereinafter employed, refers to a section of this code, unless some other code or statute is expressly mentioned.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 181; Code Commission amendment, Act March 19, 1901, Stats. and Amdts. 1900-1, p. 332; unconstitutional, see history, § 4 ante; amended March 25, 1903, Stats. and Amdts. 1903, p. 407.

§ 15. GOOD FAITH, WHAT CONSTITUTES [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 182.

§ 16. DEGREES OF CARE AND NEGLIGENCE [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 182.

§ 17. DEGREES OF NEGLIGENCE [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 182.

§ 18. NOTICE, ACTUAL AND CONSTRUCTIVE. Notice is:

1. Actual—which consists in express information of a fact; or,

2. Constructive—which is imputed by law.

History: Enacted March 21, 1872.

§ 19. CONSTRUCTIVE NOTICE [WHEN DEEMED]. Every person who has had actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 182.

§ 20. **EFFECT OF REPEAL.** No statute, law, or rule is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code, all statutes, laws, and rules heretofore in force in this state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed or abrogated.

This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 333, held unconstitutional; see history, § 4 ante.

§ 21. **THIS ACT, HOW CITED.** This act, whenever cited, enumerated, referred to, or amended, may be designated simply as "The Civil Code," adding, when necessary, the number of the section.

History: Enacted March 21, 1872.

DIVISION FIRST.

Part I. Persons, §§ 25-42.
II. Personal Rights, §§ 43-50.
III. Personal Relations, §§ 55-276.
IV. Corporations, §§ 283-653.

PART I.

PERSONS.

§ 25. Minors, who are.
§ 26. Periods of minority, how calculated.
§ 27. Adults, who are.
§ 28. Status of minors, how changed [repealed].
§ 29. Unborn child.
§ 30. Persons made adults by other states, considered as such in this state, when domiciled herein [repealed].
§ 31. Minors by the law of other state or country, how considered in this state [repealed].
§ 32. Custody of minors.
§ 33. Minors cannot give a delegation of power.
§ 34. Contracts of minors made; disaffirmance.
§ 35. When minor may disaffirm.
§ 36. Cannot disaffirm contract for necessaries.
§ 37. Nor certain obligations.
§ 38. Contracts of persons without understanding.
§ 39. Contracts by persons of unsound mind.
§ 40. Power of persons whose incapacity has been adjudged.
§ 41. Minors liable for wrongs, but not liable for exemplary damages.
§ 42. Minors may enforce their rights.

§ 25. MINORS, WHO ARE. Minors are:

1. **Males** under twenty-one years of age;
2. **Females** under eighteen years of age.

History: Enacted March 21, 1872.

§ 26. PERIODS OF MINORITY, HOW CALCULATED. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: Enacted March 21, 1872; amended Code Commission, Act March 8, 1901, Stats. and Amdts. 1900-1, p. 333, held unconstitutional; see history, § 4, ante.

§ 27. ADULTS, WHO ARE. All other persons are adults.

History: Enacted March 21, 1872.

§ 28. STATUS OF MINORS, HOW CHANGED [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 182.

§ 29. UNBORN CHILD. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: Enacted March 21, 1872.

§ 30. PERSONS MADE ADULTS BY OTHER STATES, CONSIDERED AS SUCH IN THIS STATE, WHEN DOMICILED HEREIN [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 182.

§ 31. MINORS BY THE LAWS OF OTHER STATE OR COUNTRY, HOW CONSIDERED IN THIS STATE [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 182.

§ 32. CUSTODY OF MINORS. The custody of minors and persons of unsound mind is regulated by Part III of this division.

History: Enacted March 21, 1872.

§ 33. MINORS CANNOT GIVE A DELEGATION OF POWER. A minor cannot give a delegation of power, nor under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 182.

§ 34. CONTRACTS BY MINORS MADE; DISAFFIRMANCE. A minor may make any other contract than as above specified, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of

this title, and subject to the provisions of the titles on marriage, and on master and servant.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 183; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 333, unconstitutional; see history, § 4, ante.

§ 35. **WHEN MINORS MAY DISAFFIRM.** In all cases other than those specified in sections thirty-six and thirty-seven, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 183.

§ 36. **CANNOT DISAFFIRM CONTRACT FOR NECESSARIES.** A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 183.

§ 37. **NOR CERTAIN OBLIGATIONS.** A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

History: Enacted March 21, 1872.

§ 38. **CONTRACTS OF PERSONS WITHOUT UNDERSTANDING.** A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 183.

§ 39. **CONTRACTS BY PERSONS OF UNSOUND MIND.** A conveyance or other contract of person of unsound mind but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on rescission of this code.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 184.

§ 40. **POWERS OF PERSONS WHOSE INCAPACITY HAS BEEN ADJUDGED.** After his incapacity has been judicially determined, a person of insane mind can make no conveyance or other contract, nor delegate any power or waive any right, until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom, cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge.

History: Enacted March 21, 1872; amended March 30, 1878, Code Amdts. 1877-8, p. 75; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, pp. 333-334, held unconstitutional; see history, § 4 ante.

§ 41. **MINORS LIABLE FOR WRONGS, BUT NOT LIABLE FOR EXEMPLARY DAMAGES.** A minor, or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: Enacted March 21, 1872.

§ 42. **MINORS MAY ENFORCE THEIR RIGHTS.** A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

History: Enacted March 21, 1872.

PART II.

PERSONAL RIGHTS.

§ 43. General personal rights.
§ 44. Defamation, what is.
§ 45. Libel, what is.
§ 46. Slander, what is.
§ 47. What communications are privileged.
§ 48. Malice not inferred.
§ 49. Protection to personal relations.
§ 50. Right to use force.
§ 51. Rights of citizens in places of public accommodation and amusement.
§ 52. Damages recoverable for violation of preceding section.
§ 53. Wrongful refusal to admit persons to places of public amusement.
§ 54. Damages recoverable for such refusal.

§ 43. **GENERAL PERSONAL RIGHTS.** Besides the personal rights mentioned or recognized in the Political Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

History: Enacted March 21, 1872.

§ 44. **DEFAMATION, WHAT.** Defamation is effected by:

1. Libel;
2. Slander.

History: Enacted March 21, 1872.

§ 45. **LIBEL, WHAT.** Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

History: Enacted March 21, 1872.

§ 46. **SLANDER, WHAT.** Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;

2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;

3. Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit;

4. Imputes to him impotence or a want of chastity; or,

5. Which, by natural consequence, causes actual damage.

History: Enacted March 21, 1872.

§ 47. **PRIVILEGED PUBLICATION, IS WHAT.** A privileged publication is one made—

1. In the proper discharge of an official duty.

2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law.

3. In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.

4. By a fair and true report, without malice, in a public journal, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof, or of a verified charge or complaint made by any person to a public official, upon which complaint a warrant shall have been issued.

5. By a fair and true report, without malice, of the proceedings of a public meeting, if such meeting was lawfully

convened for a lawful purpose and open to the public, or the publication of the matter complained of was for the public benefit.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 184; March 26, 1895, Stats. and Amdts. 1895, p. 167; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 334, held unconstitutional; see history, § 4 ante.

§ 48. **MALICE NOT INFERRED.** In the cases provided for in subdivisions three, four, and five, of the preceding section, malice is not inferred from the communication or publication.

History: Enacted March 21, 1872; amended March 26, 1895, Stats. and Amdts. 1895, p. 168. **In force** March 26, 1895.

§ 49. **PROTECTION OF PERSONAL RELATIONS.** The rights of personal relations forbid:

1. The abduction of a husband from his wife, or of a parent from his child.

2. The abduction or enticement of a wife from her husband, or a child from a parent, or from a guardian entitled to its custody.

3. The seduction of a wife, daughter, orphan sister, or servant.

4. Any injury to a servant which affects his ability to serve his master.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 334, held unconstitutional; see history, § 4 ante; amended March 7, 1905, Stats. and Amdts. 1905, p. 68.

§ 50. **RIGHT TO USE FORCE.** Any necessary force may be used to protect from wrongful injury the person or property of oneself [one's self], or of a wife, husband, child,

parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 184.

§51. **RIGHTS OF CITIZENS IN PLACES OF PUBLIC ACCOMMODATION OR AMUSEMENT.** All citizens within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, hotels, eating-houses, barber-shops, bath-houses, theaters, skating-rinks, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens.

History: Added by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 334, held unconstitutional; see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 553.

§52. **DAMAGES RECOVERABLE FOR VIOLATION OF PRECEDING SECTION.** Whoever violates any of the provisions of the last preceding section, by denying to any citizen, except for reasons applicable alike to every race or color, the full accommodations, advantages, facilities, and privileges in said section enumerated, or by aiding or inciting such denial, or whoever makes any discrimination, distinction, or restriction on account of color or race, or except for good cause, applicable alike to all citizens of every color or race whatever, in respect to the admission of any citizen to, or his treatment in, any inn, hotel, restaurant, eating-house, barber-shop, bath-house, theater, skating-rink, or other public place of amusement or accommodation, whether such place is licensed or not, or whoever aids or incites such discrimination, distinction, or restriction, for

each and every such offense is liable in damages in an amount not less than fifty dollars, which may be recovered in an action at law brought for that purpose.

History: Added by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 334, held unconstitutional; see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 553.

§ 53. **WRONGFUL REFUSAL TO ADMIT PERSON TO PLACES OF PUBLIC AMUSEMENT.** It is unlawful for any corporation, person, or association, or the proprietor, lessee, or the agents of either, of any opera house, theater, melodeon, museum, circus, caravan, race-course, fair, or other place of public amusement or entertainment, to refuse admittance to any person over the age of twenty-one years, who presents a ticket of admission acquired by purchase, or who tenders the price thereof for such ticket, and who demands admission to such place.

[Who may be excluded.] Any person under the influence of liquor, or who is guilty of boisterous conduct, or any person of lewd or immoral character, may be excluded from any such place of amusement.

History: Added by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 335, held unconstitutional; see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 554.

§ 54. **DAMAGES RECOVERABLE FOR SUCH REFUSAL.** Any person who is refused admission to any place of amusement contrary to the provisions of the last preceding section, is entitled to recover from the proprietor, lessee, or their agents, or from any such person, corporation, or association, or the directors thereof, his actual damages, and one hundred dollars in addition thereto.

History: Added by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 335, held unconstitutional; see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 554.

PART III.

PERSONAL RELATIONS.

Title I. Marriage, §§ 55-181.
II. Parent and Child, §§ 193-230.
III. Guardian and Ward, §§ 236-258.
IV. Master and Servant, §§ 264-276.

TITLE I.

MARRIAGE.

Chapter I. The Contract of Marriage, §§ 55-80.
II. Divorce, §§ 82-148.
III. Husband and Wife, §§ 155-181.

CHAPTER I.

THE CONTRACT OF MARRIAGE.

Article I. Validity of Marriage, §§ 55-63.
II. Authentication of Marriage, §§ 68-79½.
III. Judicial Determination of Void Marriages, § 80.

ARTICLE I.

VALIDITY OF MARRIAGE.

§ 55. What constitutes marriage.
§ 56. Minors capable of contracting marriage.
§ 57. Marriage, how manifested and proved.
§ 58. Certain marriages voidable [repealed].
§ 59. Incompetency of parties to.
§ 60. Of whites and negroes or mulattoes, void.
§ 61. Subsequent marriage, when illegal and void.
§ 62. Released from marriage contract, when.
§ 63. Marriages contracted without the state.

§ 55. **WHAT CONSTITUTES MARRIAGE.** Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making the contract is necessary.

Consent alone will not constitute marriage; it must be followed by a solemnization authorized by this code.

History: Enacted March 21, 1872; amended March 26, 1895, Stats. and Amdts. 1895, p. 121.

§ 56. **MINORS CAPABLE OF CONTRACTING MARRIAGE.** Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

History: Enacted March 21, 1872.

§ 57. **MARRIAGE, HOW MANIFESTED AND PROVED.** Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases.

History: Enacted March 21, 1872; amended March 26, 1895, Stats. and Amdts. 1895, p. 121.

§ 58. **VOIDABLE MARRIAGES** [repealed].

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 185; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 335, held unconstitutional; see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 554.

§ 59. **INCOMPETENCY OF PARTIES TO.** Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces

or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

History: Enacted March 21, 1872.

§ 60. **OF WHITES AND NEGROES OR MULATTOES, VOID.** All marriages of white persons with negroes, mongolians, or mulattoes are illegal and void.

History: Enacted March 21, 1872; amended by Code Commission (by adding word "mongolian"), Act March 16, 1901, Stats. and Amdts. 1900-1, p. 335, held unconstitutional; see history, § 4 ante; amended March 21, 1905, p. 554.

§ 61. **SUBSEQUENT MARRIAGE, WHEN ILLEGAL AND VOID.** A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

1. The former marriage has been annulled or dissolved. In no case can a marriage of either of the parties during the life of the other, be valid in this state, if contracted within one year after the entry of an interlocutory decree in a proceeding for divorce.

2. Unless such former husband or wife is absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or is generally reputed or believed by such person to be dead at the time such subsequent marriage was contracted. In either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 185; Feb. 25, 1897, Stats. and Amdts. 1897, p. 34; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 335, unconstitutional; see history, § 4 ante; amended March 16, 1903, Stats. and Amdts. 1903, p. 176.

§ 62. **RELEASE FROM MARRIAGE CONTRACT, WHEN.** Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 185.

§ 63. **MARRIAGES CONTRACTED WITHOUT THE STATE.** All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, are valid in this state.

History: Enacted March 21, 1872.

ARTICLE II.

AUTHENTICATION OF MARRIAGE.

§ 68. Procedure required.
§ 69. Marriage license.
§ 69a. Certificate of registry of marriage.
§ 70. By whom marriages may be celebrated.
§ 71. No particular form of solemnization.
§ 72. Requirements by persons solemnizing marriages.
§ 73. Certificate of marriage.
§ 74. Certificate of parties and recorder.
§ 75. Declaration of marriage, how made [repealed].
§ 76. Declaration where there is no record.
§ 77. Declaration to be acknowledged and recorded.
§ 78. Either party may proceed to test validity of marriage.
§ 79. Marriage without license.
§ 79a. Recording declaration of marriage.

§ 68. **PROCEDURE REQUIRED.** Marriage must be licensed, solemnized, authenticated, and recorded as provided in this article; but non-compliance with its provisions by others than a party to a marriage does not invalidate it.

History: Enacted March 21, 1872; amended March 26, 1895, Stats. and Amdts. 1895, p. 121; March 21, 1905, Stats. and Amdts. 1895, p. 554.

§ 69. **MARRIAGE LICENSES.** All persons about to be joined in marriage must first obtain a license therefor, from the county clerk of the county in which the marriage is to be celebrated, which license must show:

1. The identity of the parties.
2. Their real and full names, and places of residence.
3. Their ages; and
4. Whether white, mongolian, negro or mulatto.

[License not to issue, when.] No license must be granted when either of the parties, applicants therefor, is an imbecile, or insane, or who at the time of making the application, or proofs herein required, for said license, is under

the influence of any intoxicating liquor or narcotic drug; no license must be issued authorizing the marriage of a white person with a negro, mulatto, or mongolian: If the male is under the age of twenty-one years, or the female is under the age of eighteen years, and such person has not been previously married, no license must be issued by the county clerk unless the consent in writing of the parents of the person under age, or one of such parents, or of his or her guardian, is presented to him, duly verified by such parents, or parent, or guardian; and such consent must be filed by the clerk, and he must state such facts in the license.

[Examination on oath.] For the purpose of ascertaining all the facts mentioned or required in this section, the clerk, at the time the license is applied for, may, if he deems it necessary in order to satisfy himself as to matters in this section enumerated, examine the male applicant for a license on oath, which examination shall be reduced to writing by the clerk, and subscribed by him.

[In effect, when.] Sec. 2. This act shall be in force and take effect from and after its passage.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 186; April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 3; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 336, held unconstitutional; see history, Kerr's Cyc. C. C. § 4; amended March 18, 1905, Stats. and Amdts. 1905, p. 182; amended March 15, 1907, Stats. and Amdts. 1907, p. 305, Kerr's Stats. and Amdts. 1906-7, p. 399.

§ 69a. CERTIFICATE OF REGISTRY OF MARRIAGE. All persons about to be joined in marriage must obtain from the county clerk of the county in which the marriage is to be celebrated, in addition to the license therefor provided for in section sixty-nine of the Civil Code, a certificate of registry as provided in section three thousand and seventy-six of the Political Code which shall contain among other matters as near as can be ascertained, the race, color, age, name and surname, birthplace, residence of the

parties to be married, number of marriage and condition of each, whether single, widowed, or divorced, the occupation of the parties, maiden name of the female, if previously married, the names and birthplaces of the parents of each, and the maiden name of the mother of each, which said certificate of registry shall be filled out as herein provided in the presence of the county clerk issuing the marriage license and shall then be presented to the person performing the ceremony and shall be filed by him with the county recorder within three days after the ceremony.

History: Enacted April 26, 1909, Stats. and Amdts. 1909, p. 1093.

§ 70. **BY WHOM MARRIAGES MAY BE CELEBRATED.** Marriage may be solemnized by either a justice of the supreme court, justice of the district courts of appeal, judge of the superior court, justice of the peace, judge of any police court, city recorder, priest or minister of the gospel of any denomination.

[Repealing clause.] Sec. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 4; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 336, held unconstitutional, see history, § 69 ante; amended March 20, 1903, Stats. and Amdts. 1903, p. 255; amended March 1, 1907, Stats. and Amdts. 1907, p. 80, Kerr's Stats. and Amdts. 1906-7, p. 400. **In effect** immediately.

§ 71. **NO PARTICULAR FORM OF SOLEMNIZATION.** No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

History: Enacted March 21, 1872.

§ 72. REQUIREMENTS BY PERSONS SOLEMNIZING MARRIAGE. The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 186.

§ 73. CERTIFICATES OF MARRIAGE. The person solemnizing a marriage must make, sign, and indorse upon, or attach to, the license, a certificate, showing:

1. The fact, time, and place of solemnization; and,

2. The names and places of residence of one or more witnesses to the ceremony.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 187.

§ 74. CERTIFICATE TO PARTIES AND RECORDER. He must, at the request of, and for either party, make a certified copy of the license and certificate, and file the originals with the county recorder within thirty days after the marriage.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 336, held unconstitutional; see history, § 4 ante.

§ 75. DECLARATION OF MARRIAGE, HOW MADE. [Repealed.]

History: Enacted March 21, 1872; repealed March 26, 1895, Stats. and Amdts. 1895, p. 121.

§ 76. DECLARATION WHERE THERE IS NO RECORD. If no record of the solemnization of a marriage heretofore contracted, be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages, and residences of the parties.
2. The fact of marriage.
3. That no record of such marriage is known to exist.

Such declaration must be subscribed by the parties and attested by at least three witnesses.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 187.

§ 77. DECLARATION TO BE ACKNOWLEDGED AND RECORDED. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property.

History: Enacted March 21, 1872.

§ 78. EITHER PARTY MAY PROCEED TO TEST VALIDITY OF MARRIAGE. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the superior court, to have the validity of the marriage determined and declared.

History: Enacted March 21, 1872; amended to make it conform to new constitution, Feb. 15, 1883, Stats. and Amdts. 1883, p. 4.

§ 79. MARRIAGE WITHOUT LICENSE. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman. A certificate of such marriage must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made.

History: Enacted Feb. 3, 1878, Code Amdts. 1877-8, p. 75.

§ 79a. RECORDING DECLARATION OF MARRIAGE. The provisions of this chapter, so far as they relate to the solemnizing of marriages, are not applicable to members of any particular religious denomination having, as such, any peculiar mode of entering the marriage relation; but such marriages must be declared, as provided in section seventy-six, and be acknowledged and recorded, as provided in section seventy-seven. Where a marriage is declared as provided in said section seventy-six, the husband must file said declaration with the county recorder within thirty days after such marriage, and upon receiving the same the county recorder must record the same; and if the husband fails to make such declaration and file the same for record, as herein provided, he is liable to the same penalties as any person authorized to solemnize marriages, who fails to make the return of such solemnization as provided by law.

History: Enacted March 27, 1897, Stats. and Amdts. 1897, p. 186; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 336, held unconstitutional; see history, § 4 ante; amended and renumbered 79a instead of 79½, March 21, 1905, Stats. and Amdts. 1905, p. 555.

ARTICLE III.

JUDICIAL DETERMINATION OF VOID MARRIAGE.

§ 80. Action to have marriage declared void.

§ 80. ACTION TO HAVE MARRIAGE DECLARED VOID. Either party to an incestuous or void marriage may proceed, by action in the superior court, to have the same so declared.

History: Enacted March 15, 1876, Code Amdts. 1875-6, p. 69; amended (changing from former district to superior court) April 6, 1880, Code Amdts. (C. C. pt.), p. 4.

CHAPTER II.

DIVORCE.

Article I. Nullity, §§ 82-86.
II. Dissolution, §§ 90-107.
III. Causes for Denying Divorce, §§ 111-132.
IV. General Provisions, §§ 136-148.

ARTICLE I.

NULLITY.

§ 82. Causes for annulling marriage.
§ 83. Actions therefor, when to be commenced.
§ 84. Children of annulled marriage.
§ 85. Custody of children.
§ 86. Effect of judgment of nullity.

§ 82. CAUSES FOR ANNULLING MARRIAGES. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and

such marriage was contracted without the consent of his or her parents or guardian ,or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife.

4. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

6. That either party was, at the time of marriage, physically incapable of entering into the marriage state, and such incapacity continues, and appears to be incurable.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 187-188.

§ 83. **ACTIONS THEREFOR, WHEN COMMENCED.** An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision one: by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent.

2. For causes mentioned in subdivision two: by either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision three: by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

4. For causes mentioned in subdivision four: by the party injured, within four years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivision five: by the injured party, within four years after the marriage.

6. For causes mentioned in subdivision six: by the injured party, within four years after the marriage.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 188-189.

§ 84. **CHILDREN OF ANNULLED MARRIAGE.** A judgment of nullity of marriage does not affect the legitimacy of children begotten before the judgment.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 337, held unconstitutional; see history, § 4 ante; amended March 21, 1905, p. 555.

§ 85. **CUSTODY OF CHILDREN.** The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

History: Enacted March 21, 1872.

§ 86. **EFFECT OF JUDGMENT OF NULLITY.** A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

History: Enacted March 21, 1872.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

§ 90. Marriage, how dissolved.
§ 91. Effect of divorce.
§ 92. Causes for divorce.
§ 93. Adultery defined.
§ 94. Extreme cruelty, what.
§ 95. Desertion, what.
§ 96. Desertion, how manifested.
§ 97. In case of stratagem or fraud, who commits desertion.
§ 98. In case of cruelty, where one party leaves the other, who commits desertion.
§ 99. Separation by consent not desertion.
§ 100. Absence becomes desertion, when.
§ 101. Consent to separate revocable.
§ 102. Desertion, how cured.
§ 103. Wife must abide by husband's selection of home, or it is desertion on her part.
§ 104. If place is unfit, and wife refuses to conform, it is desertion by the husband.
§ 105. Wilful neglect, what.
§ 106. Habitual intemperance, what.
§ 107. Habitual intemperance for one year.

§ 90. MARRIAGE, HOW DISSOLVED. Marriage is dissolved only:

1. By death of one of the parties; or,

2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 189.

§ 91. EFFECT OF DIVORCE. The effect of a judgment decreeing a divorce, is to restore the parties to the state of unmarried persons.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 189.

§ 92. **CAUSES FOR DIVORCE.** Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion.
4. Wilful neglect.
5. Habitual intemperance.
6. Conviction of felony.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 189.

§ 93. **ADULTERY DEFINED.** Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

History: Enacted March 21, 1872.

§ 94. **EXTREME CRUELTY, WHAT.** Extreme cruelty is the wrongful infliction of grievous bodily injury, or grievous mental suffering, upon the other by one party to the marriage.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 337, held unconstitutional; see history, § 4 ante; amended March 7, 1905, Stats. and Amdts. 1905, p. 75.

§ 95. **DESERTION, WHAT.** Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

History: Enacted March 21, 1872.

§ 96. **DESERTION, HOW MANIFESTED.** Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

History: Enacted March 21, 1872.

§ 97. **IN CASE OF STRATAGEM OR FRAUD, WHO COMMITS DESERTION.** When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling-place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

History: Enacted March 21, 1872.

§ 98. **IN CASE OF CRUELTY, WHERE ONE PARTY LEAVES THE OTHER, WHO COMMITS DESERTION.** Departure or absence of one party from the family dwelling-place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

History: Enacted March 21, 1872.

§ 99. **SEPARATION BY CONSENT NOT DESERTION.** Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

History: Enacted March 21, 1872.

§ 100. **ABSENCE BECOMES DESERTION, WHEN.** Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 189.

§ 101. **CONSENT TO SEPARATE REVOCABLE.** Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

History: Enacted March 21, 1872.

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§ 102. **DESERTION, HOW CURED.** If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfil the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 190.

§ 103. **WIFE MUST ABIDE BY HUSBAND'S SELECTION OF HOME, OR IT IS DESERTION ON HER PART.** The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

History: Enacted March 21, 1872.

§ 104. **IF THE PLACE IS UNFIT, AND WIFE REFUSES TO CONFORM, IT IS DESERTION BY THE HUSBAND.** If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

History: Enacted March 21, 1872.

§ 105. **WILFUL NEGLECT, WHAT.** Wilful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

History: Enacted March 21, 1872.

§ 106. **HABITUAL INTEMPERANCE, WHAT.** Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 337, held unconstitutional; see history, § 4 ante.

§ 107. **HABITUAL INTEMPERANCE FOR ONE YEAR.** Wilful desertion, wilful neglect, or habitual intemperance must continue for one year before either is a ground for divorce.

History: Enacted March 21, 1872.

ARTICLE III.

CAUSES FOR DENYING DIVORCE.

§ 111. Divorces denied, on showing what.
§ 112. Connivance, what.
§ 113. Corrupt consent, how manifested.
§ 114. Collusion, what.
§ 115. Condonation, what.
§ 116. Requisites of condonation.
§ 117. Condonation implies what.
§ 118. Evidence of condonation.
§ 119. Can only be made, when.
§ 120. Concealment of facts in certain cases makes condonation void.
§ 121. Condonation, how revoked.
§ 122. Recrimination, what.
§ 123. Condonation, when to bar defense.
§ 124. Divorce, when denied.
§ 125. Lapse of time establishes certain presumption.
§ 126. Presumption may be rebutted.
§ 127. Limitation of time.
§ 128. Actions in divorce case. [Plaintiff must be resident. Cross-complaint by nonresident.]
§ 129. Proof of actual residence required. Presumptions do not apply.
§ 130. Divorce by default, etc. [Not granted.]
§ 131. [Court must file decision.] Interlocutory judgment, when.
§ 132. Final judgment, after one year.

§ 111. DIVORCES DENIED, ON SHOWING WHAT.

Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

History: Enacted March 21, 1872.

§ 112. **CONNIVANCE, WHAT.** Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

History: Enacted March 21, 1872.

§ 113. **CORRUPT CONSENT, HOW MANIFESTED.** Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

History: Enacted March 21, 1872.

§ 114. **COLLUSION, WHAT.** Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

History: Enacted March 21, 1872.

§ 115. **CONDONATION, WHAT.** Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

History: Enacted March 21, 1872.

§ 116. **REQUISITES TO CONDONATION.** The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party;
3. Restoration of the offending party to all marital rights.

History: Enacted March 21, 1872.

§ 117. **CONDONATION IMPLIES WHAT.** Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness.

History: Enacted March 21, 1872.

§ 118. **EVIDENCE OF CONDONATION.** Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from excessive acts of ill-treatment which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 190.

§ 119. **CAN ONLY BE MADE, WHEN.** In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 190.

§ 120. **CONCEALMENT OF FACTS IN CERTAIN CASES MAKES CONDONATION VOID.** A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

History: Enacted March 21, 1872.

§ 121. **CONDONATION, HOW REVOKED.** Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,

2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

History: Enacted March 21, 1872.

§ 122. **RECRIMINATION, WHAT.** Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

History: Enacted March 21, 1872.

§ 123. **CONDONATION, WHEN TO BAR DEFENSE.** Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as provided in section one hundred and twenty-one, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 190-191.

§ 124. **DIVORCE, WHEN DENIED.** A divorce must be denied:

1. When the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,

2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence.

3. In all other cases when there is an unreasonable lapse of time before the commencement of the action.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 191.

§ 125. **LAPSE OF TIME ESTABLISHES CERTAIN PRESUMPTIONS.** Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation[,] notwithstanding the commission of such offense.

History: Enacted March 21, 1872.

§ 126. **PRESUMPTIONS MAY BE REBUTTED.** The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

History: Enacted March 21, 1872.

§ 127. **LIMITATION OF TIME.** There are no limitations of time for commencing actions for divorce, except such as are contained in section one hundred and twenty-four.

History: Enacted March 21, 1872.

§ 128. **ACTIONS IN DIVORCE CASES. [PLAINTIFF MUST BE RESIDENT. CROSS-COMPLAINT BY NON-RESIDENT.]** A divorce must not be granted unless the plaintiff has been a resident of the state one year, and of the county in which the action is brought three months, next preceding the commencement of the action; provided, that a cross-complainant in an action for divorce need not be or have been a resident of the state or of the county in which the action is brought or pending in order to entitle such cross-complainant to a divorce in said action; and provided, further, that in an action for divorce a cross-complainant must personally verify the cross-complaint.

History: Enacted March 21, 1872; amended March 10, 1891, Stats. and Amdts. 1891, p. 52; April 6, 1911, Stats. and Amdts. 1911, p. 686.

§ 129. **PROOF OF ACTUAL RESIDENCE REQUIRED. PRESUMPTIONS DO NOT APPLY.** In actions for divorce the presumption of law, that the domicile of the husband is the domicile of the wife, does not apply. After separation, each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

History: Enacted March 21, 1872.

§ 130. DIVORCE BY DEFAULT, ETC. [NOT GRANTED]. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 191.

§ 131. [COURT MUST FILE DECISION.] INTERLOCUTORY JUDGMENT, WHEN. In actions for divorce, the court must file its decision and conclusions of law as in other cases, and if it determines that no divorce shall be granted, final judgment must thereupon be entered accordingly. If it determines that the divorce ought to be granted, an interlocutory judgment must be entered, declaring that the party in whose favor the court decides is entitled to a divorce. After the entry of the interlocutory judgment, neither party shall have the right to dismiss the action without the consent of the other.

History: Enacted March 2, 1903, Stats. and Amdts. 1903, p. 75; amended April 16, 1909, Stats. and Amdts. 1909, p. 491; April 24, 1915, Stats. and Amdts. 1915, p. 209. **In effect** August 8, 1915.

§ 132. FINAL JUDGMENT, AFTER ONE YEAR. When one year has expired after the entry of such interlocutory judgment, the court on motion of either party, or upon its own motion, may enter the final judgment granting the divorce, and such final judgment shall restore them to the status of single persons, and permit either to marry after the entry thereof; and such other and further relief as may be necessary to complete disposition of the action, but

If any appeal is taken from the interlocutory judgment or motion for a new trial made, final judgment shall not be entered until such motion or appeal has been finally disposed of, nor then, if the motion has been granted or judgment reversed.

The death of either party after the entry of the interlocutory judgment does not impair the power of the court to enter final judgment as hereinbefore provided; but such entry shall not validate any marriage contracted by either party before the entry of such final judgment, nor constitute any defense of any criminal prosecution made against either.

History: Enacted March 2, 1903, Stats. and Amdts. 1903, p. 76.

ARTICLE IV.

GENERAL PROVISIONS.

§ 136. Relief may be adjudged in some cases, where separation is denied.
§ 137. Expenses of action for divorce. [Alimony.]
§ 138. Orders respecting custody of children.
§ 139. Support of wife and children on divorce or separation granted wife.
§ 140. Security for maintenance and alimony.
§ 141. Court shall resort to what, in executing certain sections.
§ 142. If wife has sufficient for her support, court may withhold allowance.
§ 143. Community and separate property may be subjected to support.
§ 144. Legitimacy of issue. [Divorce for adultery of husband.]
§ 145. Same. [Divorce for adultery of wife.]
§ 146. Disposition of community property.
§ 147. Same. [Duty of court to dispose of.]
§ 148. Same. [Subject to revision on appeal.]

§ 136. RELIEF MAY BE ADJUDGED IN SOME CASES, WHERE SEPARATION IS DENIED. Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance by the husband, of the wife and children of the marriage, or any of them.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 337, held unconstitutional; see history, § 4 ante; amended March 21, 1905, Stats. and Amdts. 1905, p. 634.

§ 137. EXPENSES OF ACTION FOR DIVORCE. [ALIMONY.] When an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself and her children, or to prosecute or defend the action.

[Permanent support.] When the husband wilfully deserts the wife or when the husband wilfully fails to provide for the wife or when the wife has any cause of action for divorce as provided in section ninety-two of this code, she may, without applying for a divorce, maintain in the superior court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court may, in its discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and execution may issue therefor in the discretion of the court. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court.

[In effect when.] Sec. 2. This act shall take effect and be in force immediately upon its passage and approval.

History: Enacted March 21, 1872; amended March 20, 1878, Code Amdts. 1877-8, p. 76; April 6, 1880, Code Amdts. (C. C. pt.), p. 4; March 18, 1905, Stats. and Amdts. 1905, c. CCXVI, p. 205; amended March 1, 1907, Stats. and Amdts. 1907, p. 82, Kerr's Stats. and Amdts. 1906-7, p. 400.

§ 138. ORDERS RESPECTING CUSTODY OF CHILDREN. In actions for divorce the court may, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such order for the custody, care, education, maintenance and support of such minor children as may seem necessary or proper, and may at any time modify or vacate the same.

History: Enacted March 21, 1872; amended March 3, 1905, Stats. and Amdts. 1905, p. 43.

§ 139. SUPPORT OF WIFE AND CHILDREN ON DIVORCE OR SEPARATION GRANTED TO WIFE. Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

History: Enacted March 21, 1872.

§ 140. SECURITY FOR MAINTENANCE AND ALIMONY. The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

History: Enacted March 21, 1872.

§ 141. COURT SHALL RESORT TO WHAT, IN EXECUTING CERTAIN SECTIONS. In executing the five preceding sections the court must resort:

1. To the community property; then,
2. To the separate property of the husband.

History: Enacted March 21, 1872.

§ 142. IF WIFE HAS SUFFICIENT FOR HER SUPPORT, COURT MAY WITHHOLD ALLOWANCE. When the wife has either a separate estate, or there is community property sufficient to give her alimony or a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband.

History: Enacted March 21, 1872.

§ 143. COMMUNITY AND SEPARATE PROPERTY MAY BE SUBJECTED TO SUPPORT AND EDUCATE CHILDREN. The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

History: Enacted March 21, 1872.

§ 144. LEGITIMACY OF ISSUE. [DIVORCE FOR ADULTERY OF HUSBAND.] When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 338, held unconstitutional; see history, § 4 ante.

§ 145. SAME. [DIVORCE FOR ADULTERY OF WIFE.] When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case.

History: Enacted March 21, 1872.

§ 146. DISPOSITION OF COMMUNITY PROPERTY. In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property, and the homestead, shall be assigned as follows:

1. If the decree be rendered on the ground of adultery, or extreme cruelty, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just.

2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties.

3. If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely or for a limited period, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

4. If a homestead has been selected from the separate property of either, it shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 191, 192; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 338, held unconstitutional; see history, § 4 ante.

§ 147. SAME. [DUTY OF COURT TO DISPOSE OF.] The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead, as in this chapter provided, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 192.

§ 148. SAME. [SUBJECT TO REVISION ON APPEAL.] The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 192.

CHAPTER III.

HUSBAND AND WIFE.

§ 155. Mutual obligations of husband and wife.
§ 156. Rights of husband, as head of family.
§ 157. In other respects their interests separate.
§ 158. Husband and wife may make contracts.
§ 159. How far may impair their legal obligations.
§ 160. Consideration for agreement of separation.
§ 161. May be joint tenants, etc.
§ 162. Separate property of the wife.
§ 163. Separate property of the husband.
§ 164. Community property. Conveyances of real property to and by married women. Time limit for bringing action.
§ 165. Inventory of separate property of wife.
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§ 167. Community property, contracts by wife.
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§ 174. Support of wife.
§ 175. Husband not liable for support when abandoned by wife.
§ 176. When wife must support husband.
§ 177. Rights of husband and wife governed by what.
§ 178. Marriage settlement contracts, how executed.
§ 179. Same. To be acknowledged and recorded.
§ 180. Effect of recording.
§ 181. Minors may make marriage settlements.

§ 155. MUTUAL OBLIGATIONS OF HUSBAND AND WIFE. Husband and wife contract towards each other obligations of mutual respect, fidelity, and support.

History: Enacted March 21, 1872.

§ 156. RIGHTS OF HUSBAND, AS HEAD OF FAMILY. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

History: Enacted March 21, 1872.

§ 157. IN OTHER RESPECTS THEIR INTERESTS SEPARATE. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

History: Enacted March 21, 1872.

§ 158. HUSBAND AND WIFE MAY MAKE CONTRACTS. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.

History: Enacted March 21, 1872.

§ 159. HOW FAR MAY ALTER THEIR LEGAL RELATIONS. A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 193.

§ 160. CONSIDERATION FOR AGREEMENT OF SEPARATION. The mutual consent of the parties is a

sufficient consideration for such an agreement as is mentioned in the last section.

History: Enacted March 21, 1872.

§ 161. **MAY BE JOINT TENANTS, ETC.** A husband and wife may hold property as joint tenants, tenants in common, or as community property.

History: Enacted March 21, 1872; amended by Code Commissioners, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 338; held unconstitutional; see history, § 4 ante.

§ 162. **SEPARATE PROPERTY OF THE WIFE.** All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

History: Enacted March 21, 1872.

§ 163. **SEPARATE PROPERTY OF THE HUSBAND.** All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

History: Enacted March 21, 1872.

§ 164. **COMMUNITY PROPERTY. CONVEYANCES OF REAL ESTATE TO AND BY MARRIED WOMEN. TIME LIMIT FOR BRINGING ACTION.** All other property acquired after marriage by either husband or wife, or both, is community property; but whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property. And in case the conveyance be to such married woman and to her husband, or to her and any

other person, the presumption is that the married woman takes the part conveyed to her, as tenant in common, unless a different intention is expressed in the instrument, and the presumption in this section mentioned is conclusive in favor of a purchaser or encumbrancer in good faith and for a valuable consideration. And in cases

Where married women have conveyed, or shall hereafter convey, real property which they acquired prior to May nineteenth, eighteen hundred and eighty-nine, the husbands, or their heirs or assigns, of such married women, shall be barred from commencing or maintaining any action to show that said real property was community property, or to recover said real property, as follows: As to conveyances heretofore made, from and after one year from the date of the taking effect of this act; and as to conveyances hereafter made, from and after one year from the filing for record in the recorder's office of such conveyances, respectively.

History: Enacted March 21, 1872; amended March 19, 1889, Stats. and Amdts. 1889, p. 328; March 3, 1893, Stats. and Amdts. 1893, p. 71; March 4, 1897, Stats. and Amdts. 1897, p. 63; by Code Commissioners, Act March 16, 1900-1, p. 193; held unconstitutional, see history, § 4 ante.

§ 165. **INVENTORY OF SEPARATE PROPERTY OF WIFE.** A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside.

History: Enacted March 21, 1872.

§ 166. **FILING INVENTORY NOTICE OF WIFE'S TITLE, ETC.** The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the wife.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 193.

§ 167. COMMUNITY PROPERTY, CONTRACTS BY WIFE. The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a pledge or mortgage thereof executed by the husband.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 193.

§ 168. EARNINGS OF WIFE NOT LIABLE FOR DEBTS OF HUSBAND. The earnings of the wife are not liable for the debts of the husband.

History: Enacted March 21, 1872.

§ 169. EARNINGS OF WIFE, WHEN LIVING SEPARATE, SEPARATE PROPERTY. The earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

History: Enacted March 21, 1872.

§ 170. LIABILITY FOR DEBTS OF WIFE CONTRACTED BEFORE MARRIAGE. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

History: Enacted March 21, 1872; amended by Code Commissioners, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 193; held unconstitutional, see history, § 4, ante.

§ 171. WIFE'S PROPERTY NOT LIABLE FOR DEBTS OF THE HUSBAND, BUT LIABLE FOR HER OWN DEBTS. The separate property of the wife is liable for her own debts contracted before or after her marriage, but is not liable for her husband's debts; provided, that the separate property of the wife is liable for the payment of debts contracted by the husband or wife for the necessaries of life furnished to them or either of them while they are

living together; provided, that the provisions of the foregoing proviso shall not apply to the separate property of the wife held by her at the time of her marriage or acquired by her by devise, succession, or gift, other than by gift from the husband, after marriage.

History: Enacted March 21, 1872; amended March 18, 1905, Stats. and Amdts. 1905, p. 206; May 29, 1915, Stats. and Amdts. 1915, p. 920. **In effect** August 8, 1915.

§ 171a. **TORTS OF MARRIED WOMAN.** For civil injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be liable therefor, except in cases where he would be jointly liable with her if the marriage did not exist.

History: Enacted May 21, 1913, Stats. and Amdts. 1913, p. 217. **In effect** August 10, 1913.

§ 172. **POWER OF HUSBAND OVER COMMUNITY PROPERTY.** The husband has the management and control of the community property, with the like absolute power of disposition, other than testamentary, as he has of his separate estate; provided, however, that he cannot make a gift of such community property, or convey the same without a valuable consideration, unless the wife, in writing, consent thereto; and provided also, that no sale, conveyance or encumbrance of the furniture, furnishings and fittings of the home, or of the clothing and wearing apparel of the wife or minor children, which is community property shall be made without the written consent of the wife.

History: Enacted March 21, 1872; amended March 31, 1891, Stats. and Amdts. 1891, p. 425; March 23, 1901, Stats. and Amdts. 1900-1, p. 598.

§ 173. **COURTESY AND DOWER NOT ALLOWED.** No estate is allowed the husband as tenant by courtesy upon

the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

History: Enacted March 21, 1872. The Act of April 17, 1850, § 10 (Stats. 1850, ch. 103, p. 254), contained the same provision.—See Beard vs. Knox, 6 Cal. 252, 756, 63 Am. Dec. 125; Panaud vs. Jones, 1 Cal. 488, 513.

§ 174. **SUPPORT OF WIFE.** If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 193.

§ 175. **HUSBAND NOT LIABLE FOR SUPPORT WHEN ABANDONED BY WIFE.** A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 193.

§ 176. **WIFE TO SUPPORT HUSBAND, WHEN.** The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable, from infirmity, to support himself.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 194.

§ 177. **RIGHTS OF HUSBAND AND WIFE GOVERNED BY WHAT.** The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

History: Enacted March 21, 1872.

§ 178. **MARRIAGE SETTLEMENT CONTRACTS, HOW EXECUTED.** All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

History: Enacted March 21, 1872.

§ 179. **SAME. TO BE ACKNOWLEDGED AND RECORDED.** When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

History: Enacted March 21, 1872.

§ 180. **EFFECT OF RECORDING.** The recording or non-recording of such contract has a like effect as the recording or non-recording of a grant of real property.

History: Enacted March 21, 1872.

§ 181. **MINORS MAY MAKE MARRIAGE SETTLEMENTS.** A minor capable of contracting marriage may make a valid marriage settlement.

History: Enacted March 21, 1872.

TITLE II.

PARENT AND CHILD

Chapter I. By Birth, §§ 193-215.
II. By Adoption, §§ 221-230.

CHAPTER I.

CHILDREN BY BIRTH.

§ 193. Legitimacy of children born in wedlock.
§ 194. Children after dissolution of marriage.
§ 195. Who may dispute the legitimacy of a child.
§ 196. Obligation of parents for the support and education of their children.
§ 196a. Support of illegitimate child.
§ 197. Custody of legitimate child.
§ 198. Husband and wife living separate, neither to have superior right to custody of children.
§ 199. When husband or wife may bring action for the exclusive control of children. Decree in such cases.
§ 200. Custody of an illegitimate child.
§ 201. Allowance to parent.
§ 202. Parent cannot control the property of child.
§ 203. Remedy for parental abuse.
§ 204. When parental authority ceases.
§ 205. Remedy when a parent dies without providing for the support of his child.
§ 206. Reciprocal duties of parents and children in maintaining each other.
§ 207. When a parent is liable for necessaries supplied to a child.
§ 208. When a parent is not liable for support furnished his child.
§ 209. Husband not bound for the support of his wife's children by a former marriage.
§ 210. Compensation and support of adult child.
§ 211. Parent may relinquish services and custody of child.
§ 212. Wages of minors.

§ 213. Right of parent to determine residence of child.
§ 214. Wife in certain cases may obtain custody of minor children.
§ 215. When child becomes legitimate.

§ 193. **LEGITIMACY OF CHILDREN BORN IN WEDLOCK.** All children born in wedlock are presumed to be legitimate.

History: Enacted March 21, 1872; amended by Code Commission, Act March 26, 1901, Stats. and Amdts. 1900-1, p. 339, held unconstitutional; see history, § 4 ante.

§ 194. **CHILDREN AFTER DISSOLUTION OF MARRIAGE.** All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 194.

§ 195. **WHO MAY DISPUTE THE LEGITIMACY OF A CHILD.** The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

History: Enacted March 21, 1872.

§ 196. **OBLIGATION OF PARENTS FOR THE SUPPORT AND EDUCATION OF THEIR CHILDREN.** The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

History: Enacted March 21, 1872.

§ 196a. **SUPPORT OF ILLEGITIMATE CHILD.** The father as well as the mother, of an illegitimate child must give him support and education suitable to his circumstances. A civil suit to enforce such obligations may be maintained in behalf of a minor illegitimate child, by his mother or guardian, and in such action the court shall have power to order and enforce performance thereof, the same as under sections one hundred and thirty-eight, one hundred and thirty-nine and one hundred and forty of the Civil Code, in a suit for divorce by a wife.

History: Enacted May 22, 1913, Stats. and Amdts. 1913, p. 218. **In effect** August 10, 1913.

§ 197. **CUSTODY OF LEGITIMATE CHILD.** The father and mother of a legitimate unmarried minor child are equally entitled to its custody, services and earnings. If either the father or mother be dead or unable or refuse to take the custody or has abandoned his or her family, the other is entitled to its custody, services and earnings.

History: Enacted March 12, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 194; April 22, 1913, Stats. and Amdts. 1913, p. 52. **In effect** August 10, 1913.

§ 198. **HUSBAND AND WIFE LIVING SEPARATE, NEITHER TO HAVE SUPERIOR RIGHT TO CUSTODY OF CHILDREN.** The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

History: Enacted March 21, 1872.

§ 199. **WHEN HUSBAND OR WIFE MAY BRING ACTION FOR THE EXCLUSIVE CONTROL OF CHILDREN. DECREE IN SUCH CASES.** Without application for a divorce, the husband or the wife may bring an action

for the exclusive control of the children of the marriage; and the court may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

History: Enacted March 21, 1872.

§ 200. **CUSTODY OF AN ILLEGITIMATE CHILD.** The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings.

History: Enacted March 21, 1872.

§ 201. **ALLOWANCE TO PARENT.** The proper court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

History: Enacted March 21, 1872.

§ 202. **PARENT CANNOT CONTROL PROPERTY OF CHILD.** The parent, as such, has no control over the property of the child.

History: Enacted March 21, 1872.

§ 203. **REMEDY FOR PARENTAL ABUSE.** The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisors of the county where

the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

History: Enacted March 21, 1872.

§ 204. WHEN PARENTAL AUTHORITY CEASES. The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child;

2. Upon the marriage of the child; or,

3. Upon its attaining majority.

History: Enacted March 21, 1872.

§ 205. REMEDY WHEN A PARENT DIES WITHOUT PROVIDING FOR THE SUPPORT OF HIS CHILD. If a parent chargeable with the support of a child dies, leaving it chargeable to the county, and leaving an estate sufficient for its support, the supervisors of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

History: Enacted March 21, 1872.

§ 206. RECIPROCAL DUTIES OF PARENTS AND CHILDREN IN MAINTAINING EACH OTHER. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

History: Enacted March 21, 1872.

§ 207. **WHEN A PARENT IS LIABLE FOR NECESSARIES SUPPLIED TO A CHILD.** If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

History: Enacted March 21, 1872.

§ 208. **WHEN A PARENT IS NOT LIABLE FOR SUPPORT FURNISHED HIS CHILD.** A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

History: Enacted March 21, 1872.

§ 209. **HUSBAND NOT BOUND FOR THE SUPPORT OF HIS WIFE'S CHILDREN BY A FORMER MARRIAGE.** A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services.

History: Enacted March 21, 1872.

§ 210. **COMPENSATION AND SUPPORT OF ADULT CHILD.** Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

History: Enacted March 21, 1872.

§ 211. **PARENT MAY RELINQUISH SERVICES AND CUSTODY OF CHILD.** The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

History: Enacted March 21, 1872.

§ 212. **WAGES OF MINOR.** The wages of a minor employed in service may be paid to him, until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 194.

§ 213. **RIGHT OF PARENT TO DETERMINE THE RESIDENCE OF CHILD.** A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

History: Enacted March 21, 1872.

§ 214. **WIFE IN CERTAIN CASES MAY OBTAIN CUSTODY OF MINOR CHILDREN.** When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in section two hundred and forty-six.

History: Enacted March 21, 1872.

§ 215. **WHEN CHILD BECOMES LEGITIMATE.** A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

History: Enacted March 30, 1874, Code Amdts. 1873-4, p. 195.

CHAPTER II.

ADOPTION.

§ 221. Child may be adopted.
§ 222. Who may adopt.
§ 223. Consent to adoption [by wife],
§ 224. Adoption of children. Consent necessary. Orphans and abandoned children.
§ 225. Consent of child.
§ 226. Proceedings on adoption.
§ 227. Judge's order in adoption proceedings.
§ 228. Effect of adoption.
§ 229. Effect on former relations of child.
§ 230. Adoption of illegitimate child.

§ 221. **CHILD MAY BE ADOPTED.** Any minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in this chapter.

History: Enacted March 21, 1872.

§ 222. **WHO MAY ADOPT.** The person adopting the child must be at least ten years older than the person adopted.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 195.

§ 223. **CONSENT TO ADOPTION [BY WIFE.]** A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 195.

§ 224. ADOPTION OF CHILDREN. CONSENT NECESSARY. ORPHANS AND ABANDONED CHILDREN. A legitimate child can not be adopted without the consent of its parents, if living; nor an illegitimate child without the consent of its mother, if living; except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery or cruelty, and for either cause divorced, or adjudged to be habitually intemperate in the use of intoxicants, or who has been judicially deprived of the custody of the child on account of cruelty or neglect.

[Abandoned child.] Neither is consent of any parent necessary in case of any abandoned child. Any child deserted by its parents without provision for their identification, or relinquished by its parent or parents for the purpose of adoption expressed in writing signed and acknowledged by such parent or parents before an officer authorized to take acknowledgments, or before the secretary of any organization or society engaged in the work of placing dependent or deserted children into homes in this state, which organization or society has obtained a permit therefor, duly executed in writing, from the state board of charities and corrections, shall from the date of such act of desertion or of such relinquishment be deemed to be an abandoned child within the meaning of this section. Any child left in the care and custody of another by its parent or parents, without any provision for its support, for the period of one year, may after such notice to the parent or parents residing within the state and to such other relatives of said child residing within the county as the court shall require, be determined by order of the juvenile court of the county in which said child was so left to be an abandoned child within the terms of this section.

[Child in orphan asylum.] Any abandoned child within the meaning of this section, or any child whose parent or parents have been judicially deprived of its custody on account

of cruelty or neglect, maintained by or in the custody of any orphan asylum within this state, any charitable organization or society receiving state aid or receiving commitments from the juvenile court, may be adopted with the consent of the managers of such orphan asylum, charitable organization or society. Any orphan child for whose support no provision has been made by any person for a period of one year, but who has been maintained during said year by or in the custody of any orphan asylum within this state, any charitable organization or society receiving state aid or receiving commitments from the juvenile court, may be adopted with the consent of the managers of such orphan asylum, charitable organization or society.

History: Enacted March 21, 1872; amended March 2, 1891, Stats. and Amdts. 1891, p. 24; March 9, 1893, Stats. and Amdts. 1893, p. 39; by Code Commission Act March 16, 1901, Stats. and Amdts. 1900-1, p. 339, held unconstitutional, see Kerr's Cyc. C. C. § 4; March 10, 1903, Stats. and Amdts. 1903, p. 114; March 16, 1907, Stats. and Amdts. 1907, p. 331, Kerr's Stats. and Amdts. 1906-7, p. 400; April 12, 1911, Stats. and Amdts. 1911, p. 899; April 26, 1913, Stats. and Amdts. 1913, p. 95. **In effect** August 10, 1913.

§ 225. **CONSENT OF CHILD.** The consent of a child, if over the age of twelve years, is necessary to its adoption.

History: Enacted March 21, 1872.

§ 226. **PROCEEDINGS ON ADOPTION.** Any person desiring to adopt a child may, for that purpose, petition the superior court of the county in which the petitioner resides. The person adopting a child, and the child adopted, and the other persons, if within or residents of said county, whose consent is necessary, must appear before the court, and the necessary consent must thereupon be signed and an agreement executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose

consent is necessary are not within or are not residents of said county, then their written consent, duly proved or acknowledged, according to sections eleven hundred and eighty-two and eleven hundred and eighty-three must be filed in said superior court at the time of the application for adoption.

History: Enacted March 21, 1872; amended Feb. 9, 1876; Code Amdts. 1875-6, p. 70; April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 4; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 339, held unconstitutional, see history, § 69 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 555; amended March 16, 1907, Stats. and Amdts. 1907, p. 329, Kerr's Stats. and Amdts. 1906-7, p. 401. **In effect** immediately.

§ 227. **JUDGE'S ORDER IN ADOPTION PROCEEDINGS.** The court must examine all persons appearing before it pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, it must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting. The petition, agreement, consent, and order must be filed and registered in the office of the county clerk in the same manner as papers in other special proceedings.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 340, held unconstitutional; see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 556.

§ 228. **EFFECT OF ADOPTION.** A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 195.

§ 229. **EFFECT ON FORMER RELATIONS OF CHILD.** The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it.

History: Enacted March 21, 1872.

§ 230. **ADOPTION OF ILLEGITIMATE CHILD.** The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

History: Enacted March 21, 1872.

TITLE III.

GUARDIAN AND WARD.

[Under this head the Code Commissioners placed not only the provisions relating to the guardianship of the person and estate of minors, but also those relating to the custody and care of the person and property of persons of unsound mind. "Committee" of a lunatic is termed "guardian."]

§ 236. Guardian, what.
§ 237. Ward, what.
§ 238. Kinds of guardians.
§ 239. General guardian, what.
§ 240. Special guardian, what.
§ 241. Guardian appointed by will, etc.
§ 242. No person guardian of estate without appointment [repealed].
§ 243. Appointment of guardian by court [repealed].
§ 244. Rules for awarding custody [repealed].
§ 245. Jurisdiction [repealed].
§ 246. Rules for awarding the custody, or appointing a general guardian of minors.
§ 247. Powers of guardian appointed by court [repealed].
§ 248. Duties of guardian of the person [repealed].
§ 249. Duties of guardian of estate [repealed].
§ 250. Relation confidential.
§ 251. Guardian under direction of court.
§ 252. Death of a joint guardian.
§ 253. Removal of guardian
§ 254. Guardian appointed by parent, how superseded.
§ 255. Suspension of power of guardian.
§ 256. Release by ward.
§ 257. Guardian's discharge.
§ 258. Insane persons [repealed].

§ 236. GUARDIAN, WHAT. A guardian is a person appointed to take care of the person or property of another.

History: Enacted March 21, 1872.

§ 237. **WARD, WHAT.** The person over whom or over whose property a guardian is appointed, is called his ward.

History: Enacted March 21, 1872.

§ 238. **KINDS OF GUARDIANS.** Guardians are either:
1. General; or,
2. Special.

History: Enacted March 21, 1872.

§ 239. **GENERAL GUARDIAN, WHAT.** A general guardian is a guardian of the person or of all the property of the ward within this state, or of both.

History: Enacted March 21, 1872.

§ 240. **SPECIAL GUARDIAN, WHAT.** Every other is a special guardian.

History: Enacted March 21, 1872.

§ 241. **GUARDIAN APPOINTMENT BY WILL, ETC.** A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

1. **If the child be legitimate,** by the father, with the written consent of the mother; or by either parent, if the other be dead or incapable of consent.

2. **If the child be illegitimate,** by the mother.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 195, 196.

§ 242. **NO PERSON GUARDIAN OF ESTATE WITHOUT APPOINTMENT** [repealed].

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 340, held unconstitutional; see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 728.

§ 243. APPOINTMENT OF GUARDIAN BY COURT [repealed].

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 196; April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 4; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 340, held unconstitutional; see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 728.

§ 244. RULES FOR AWARDING CUSTODY [repealed].

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 4; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 340, held unconstitutional; see history § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 728.

§ 245. JURISDICTION [repealed].

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 340, held unconstitutional; see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 728.

§ 246. RULES FOR AWARDING THE CUSTODY, OR APPOINTING A GENERAL GUARDIAN OF MINORS.

In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor and business, then to the father;

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

(1) To a parent;

(2) To one who was indicated by the wishes of a deceased parent;

(3) To one who already stands in the position of a trustee of a fund to be applied to the child's support;

(4) To a relative.

4. Any parent who knowingly or wilfully abandons, or having the ability so to do, fails to maintain his minor child under the age of fourteen years, forfeits the guardianship of such child; and any parent or guardian who knowingly permits his child or ward to remain for the space of one year in any orphan asylum of this state, wherein such child is supported by charity, and who, during such period, fails to give notice in writing to the managers or officers of such asylum that he is such parent or guardian, abandons and forever forfeits all right to the guardianship, care, custody, and control of such child. The officers and managers of any orphan asylum having any such abandoned child in its care have the preferred right to the guardianship of such child.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 196; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 340, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 728.

§ 247. POWERS OF GUARDIAN APPOINTED BY COURT [repealed].

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 341, held unconstitutional, see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 729.

§ 248. DUTIES OF GUARDIANS OF THE PERSON [repealed].

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 341, held unconstitutional; see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 729.

§ 249. DUTY OF GUARDIAN OF ESTATE [repealed].

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 197; April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 5; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 341, held unconstitutional; see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 729.

§ 250. RELATION CONFIDENTIAL. The relation of guardian and ward is confidential, and is subject to the provisions of the title on Trust.

History: Enacted March 21, 1872.

§ 251. GUARDIAN UNDER DIRECTION OF COURT. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

History: Enacted March 21, 1872.

§ 252. DEATH OF A JOINT GUARDIAN. On the death of one or two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

History: Enacted March 21, 1872.

§ 253. REMOVAL OF GUARDIAN. A guardian may be removed by the superior court for any of the following causes:

1. For abuse of his trust;
2. For continued failure to perform its [his] duties;
3. For incapacity to perform its [his] duties;
4. For gross immorality;
5. For having an interest adverse to the faithful performance of his duties;
6. For removal from the state;

7. In the case of a guardian of the property, for insolvency; or,

8. When it is no longer proper that the ward should be under guardianship.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 5.

§ 254. **GUARDIAN APPOINTED BY PARENT, HOW SUPERSEDED.** The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided by section two hundred and fifty-three;

2. By the solemnized marriage of the ward; or,

3. By the ward's attaining majority.

History: Enacted March 21, 1872.

§ 255. **SUSPENSION OF POWER OF GUARDIAN.** The power of a guardian appointed by a court, is suspended only:

1. By order of the court; or,

2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,

3. The guardianship over the person of the ward, by the marriage of the ward.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 197; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 341, held unconstitutional; see history, § 4 ante.

§ 256. **RELEASE BY WARD.** After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

History: Enacted March 21, 1872.

§ 257. GUARDIAN'S DISCHARGE. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

History: Enacted March 21, 1872.

§ 258. INSANE PERSONS [repealed].

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 5; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 341, held unconstitutional; see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 729.

TITLE IV.

MASTER AND APPRENTICE.

§ 264. Minors, when and to whom may be bound as apprentices.
§ 265. Persons who may bind minor with his consent.
§ 266. Indenture of apprenticeship, how to be executed and what to contain.
§ 267. Jury trial as to facts of incapacity, etc., of parent.
§ 268. Apprenticing of poor and homeless minors.
§ 269. Master to keep apprentice within the state, to deliver him money and other property therein.
§ 270. Duty to inquire into the treatment of minor apprentices.
§ 271. Hearing of complaints of apprentices.
§ 272. Power of court to discharge apprentice from apprenticeship.
§ 273. Liability of master for breach of his covenant.
§ 274. Liability of, and proceedings against, apprentice guilty of gross misbehavior.
§ 275. Enticing away apprentices and liability for.
§ 276. Release of master removing out of state or quitting business.

§ 264. MINORS, WHEN AND TO WHOM MAY BE BOUND AS APPRENTICES. Every minor of the age of fourteen years or upwards may be bound by indenture as an apprentice to any mechanical trade or art or the occupation of farming to the age of eighteen years, if a female, or to the age of twenty-one years, if a male.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 341, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 560.

§ 265. PERSONS WHO MAY BIND MINOR WITH HIS CONSENT. A minor, with his consent, may be bound by his father, or, in case of his death or incompetency, or where he has wilfully abandoned his family for one year

without making suitable provision for their support, or is habitually intemperate in the use of intoxicants, or is a vagrant, then by his mother or legal guardian. An executor who, by the will of the father, is directed to bring up a child to a trade or calling, has power to bind by indenture in like manner as the father might have done, if living.

If a child is illegitimate, the mother alone has power to bind him.

If a minor has no parent or guardian competent to act for him, he may bind himself, with the approval of the superior court of the county wherein he resides.

[Mother marrying.] If the mother of a minor, whether legitimate or illegitimate, marries after his birth, she cannot bind him without the approval of such superior court.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 5; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 341, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 561.

§ 266. INDENTURE OF APPRENTICESHIP, HOW TO BE EXECUTED AND WHAT TO CONTAIN. Every indenture of apprenticeship must be executed in duplicate, must state the age of the minor, and, except as hereinafter provided, must show that he consented thereto, must be signed by him and the person binding and the master, and when made with the approval of the superior court, a certified copy of the order of approval must be attached to the indenture. One copy of the indenture must be delivered to the master and the other kept for the use of the minor by his parent or guardian when executed by him, or, when made with the approval of the court, it must be filed and deposited with the clerk for safekeeping for the use of the minor.

No indenture binds the minor after the death of the master, but thereafter the minor may be bound anew. Every indenture entered into otherwise than as herein provided is, as against the apprentice, absolutely void.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 341, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 561.

§ 267. JURY TRIAL AS TO FACTS OF INCAPACITY, ETC., OF PARENT. Facts of incapacity, desertion, habitual intemperance, and vagrancy must be decided in said court by a jury, before the indenture can take effect, and an indorsement on the indenture, under seal of the court, that the charge or charges are proved, is sufficient evidence of the mother's power to give such consent; but if the jury does not find the charge or charges to be true, the person at whose instance such proceedings may have been had must pay all costs attending the same.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 341, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 561.

§ 268. APPRENTICING OF POOR AND HOMELESS MINOR. When a minor is poor, homeless, chargeable to the county or state, or an outcast, who has no visible means of obtaining an honest livelihood, the superior court may, with his consent, bind him as an apprentice during his minority.

Proceedings therefor may be instituted by any citizen, and no fee must be charged by any officer for any act in connection therewith. In all indentures by the court for binding out an orphan or homeless minor as an apprentice there must be inserted, among other things, a clause to the fol-

lowing effect: that the master to whom such minor is bound must cause him to be taught to read and write and the ground rules of arithmetic, ratio and proportion, and must give him the requisite instruction in the different branches of his trade or calling, and, at the expiration of his term of service, must give him or her fifty dollars in gold, and two whole new suits of clothes, to be worth in the aggregate at least sixty dollars gold.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 342, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, pp. 561, 562.

§ 269. MASTER TO KEEP APPRENTICE WITHIN THE STATE, TO DELIVER HIM MONEY AND OTHER PROPERTY THEREIN. A master must not remove his apprentice out of the state, and must pay and deliver to him the money, clothes, and other property to which he is entitled under the indenture of apprenticeship, to be held by him as his sole property.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 342, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1901, p. 562.

§ 270. DUTY TO INQUIRE INTO THE TREATMENT OF MINOR APPRENTICES. Parents and guardians and such court must, from time to time, inquire into the treatment of children bound by them respectively, or with their approval, and the judges of such courts are responsible for the charge of apprentices bound by a court or with its approval, and must defend them from all cruelty, neglect,

breach of contract, or misconduct on the part of their masters.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 342, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 562.

§ 271. **HEARING OF COMPLAINTS OF APPRENTICES.** The superior court must hear the complaints of apprentices who reside within the county against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, want of instruction in the different branches of their trade or calling, or that they are in danger of being removed out of the state, or any violation of the indenture of apprenticeship, and the court must hear and determine such case and make such order therein as will relieve the party in the future.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 342, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 562.

§ 272. **POWER OF COURT TO DISCHARGE APPRENTICE FROM APPRENTICESHIP.** The superior court has power, where circumstances require it, to discharge an apprentice from his apprenticeship, and, in case any money or other thing has been paid or contracted to be paid by either party in relation to the apprenticeship, the court must make such order concerning the same as seems just and reasonable. If the apprentice so discharged was originally bound by the superior court, it must, if found necessary, again bind such minor, if under age.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 342, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 562.

§ 273. **LIABILITY OF MASTER FOR BREACH OF HIS COVENANT.** Every master is liable to an action on the indenture for a breach of any covenant thereof on his part. All damages recovered in such action, after deducting necessary charges in its prosecution, belong to the minor, and must be applied and appropriated to his use by the person recovering it in his behalf, and must be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years. If no action is brought during the minority of the apprentice, it may be commenced by him in his own name at any time within two years after his coming of age.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 6; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 343, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 562.

§ 274. **LIABILITY OF, AND PROCEEDINGS AGAINST, APPRENTICES GUILTY OF GROSS MISBEHAVIOR.** An apprentice who is guilty of any gross misbehavior, or refusal to do his duty, or wilful neglect thereof, is liable to the complaint of his master in the superior court of the county wherein the apprentice resides. Such complaint must set forth the circumstances of the case, and have attached thereto a citation, signed by the clerk of the court, requiring him and all persons who have covenanted in his behalf to appear and answer the complaint within ten days after the service thereof. The complaint and citation must be served in the manner required for serving civil process. When the parties have answered, or when, though they have not answered, the time therefor allowed after the service of the complaint has expired, the court must proceed to hear and determine the cause, and, if the evidence warrants it, may render judgment that the mas-

ter be discharged from the contract of apprenticeship and for costs of suit. Such costs may be recovered from the parent or guardian of the minor, if there is any who signed the indenture, and execution therefor may issue accordingly. If there is no parent or guardian liable for such cost, execution may be issued therefor against the minor, or the amount thereof may be recovered in an action against him after he arrives at full age. He is also liable to the master in an action on the indenture for the breach of any covenant on the part of the apprentice contained therein, committed before the master was discharged from the indenture.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 343, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, pp. 562-563.

§ 275. **ENTICING AWAY APPRENTICES AND LIABILITY FOR.** It is unlawful for any person to entice, counsel, or persuade to run away any apprentice, or to harbor or conceal him, knowing him to be a runaway.

Any party so offending is guilty of a misdemeanor, and may be fined not more than one hundred dollars, to be recovered by the master in any court having jurisdiction.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 343, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 563.

§ 276. **RELEASE OF MASTER MOVING OUT OF STATE OR QUITTING BUSINESS.** Whenever any master wishes to remove out of the state, or to quit his trade or business, he must appear with his apprentice before the superior court of the county in which the latter resides, and if the court is satisfied that the master has done justice to the

apprentice for the time he has had charge of him, the court has power to discharge the master from the indenture and to again bind the apprentice, if necessary.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 344, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 563.

PART IV.

CORPORATIONS

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II. Insurance Corporations, §§ 414-453hh.

III. Railroad Corporations, §§ 454-494.

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VI. Bridge, Ferry, Wharf, Chute, and Pier Corporations, §§ 528-531.

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IX. Homestead Corporations, §§ 557-566.

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XV. Gas Corporations, §§ 629-632.

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XVIII. Consolidation of Colleges and Institutions of Higher Education, §§ 652-653.
XIX. Co-operative Business Corporations, § 653a.
XX. Co-operative Business Associations, §§ 653b-653e.
XXI. Non-Profit, Co-operative Agricultural, Viticultural, and Horticultural Associations, §§ 653m-653s.
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TITLE I.

GENERAL PROVISIONS APPLICABLE TO ALL CORPORATIONS

Chapter I. Formation of Corporations, §§ 283-321b.
II. Corporate Stock, §§ 322-349.
III. Corporate Powers, §§ 354-393.
IV. Extension and Dissolution of Corporations, §§ 399-403.
V. General Provisions Affecting Corporations, §§ 403a, 404.
VI. Foreign Corporations, §§ 405-410.

CHAPTER I.

FORMATION OF CORPORATIONS

Article I. Corporations Defined and How Organized, §§ 283-300a.
II. By-Laws, Directors, Elections, and Meetings, §§ 301-321b.

ARTICLE I.

CORPORATIONS DEFINED AND HOW ORGANIZED.

§ 283. Corporation defined.
§ 284. [Kinds of]—What are public and what private corporations.
§ 285. Private, how formed.
§ 286. [Same]. For what purpose.
§ 287. Existence, how construed [under code].
§ 288. Existing corporations not affected.
§ 289. Name of instrument creating corporation.
§ 290. Articles of incorporation. What they must set forth. Number of directors may be increased or diminished.
§ 290a. Minimum capital required to be paid by certain corporations.
§ 291. Certain corporations to state further facts in articles.
§ 292. How executed. [Subscription and acknowledgment].
§ 293. Prerequisites to filing articles. Amounts to be subscribed to be affixed.
§ 294. Prerequisites to filing articles of incorporation for profit.
§ 295. Oath of officer to subscription of stock and payment of ten per cent.
§ 296. Articles of incorporation. Corporate name must not be duplicated or closely imitated.
§ 297. Copy of articles prima facie evidence.
§ 297a. Restoration of lost original articles of incorporation.
§ 298. Who are members and who stockholders of a corporation.
§ 299. When members die successors to be elected [repealed].
§ 299a. Copies of articles must be filed in every county where the corporation acquires property, etc.
§ 300. Capital stock of banking corporations.
§ 300a. Copy of decree to be filed with secretary of state.

§ 283. CORPORATION DEFINED. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

History: Enacted March 21, 1872.

§ 284. [KINDS OF]—WHAT ARE PUBLIC AND WHAT PRIVATE CORPORATIONS. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 197.

§ 285. PRIVATE, HOW FORMED. Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this article. A majority of such persons must be residents of this state.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 198; March 20, 1905, Stats. and Amdts. 1905, p. 502.

§ 286. [SAME.] FOR WHAT PURPOSE. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 198.
The original section enumerated seventeen purposes for which corporations might be formed, and prohibited all other purposes.

§ 287. EXISTENCE, HOW CONTINUED [UNDER CODE]. Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this state, and still existing, which has not already elected to continue its existence, under the provisions of this code applicable thereto, may, at any time hereafter, make such election by the unanimous vote of all its directors, or such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the

capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members.

[Certificate to be filed.] A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of corporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 198-199.

§ 288. **EXISTING CORPORATIONS NOT AFFECTED.** No corporation formed or existing before twelve o'clock, noon, of the day upon which this code takes effect, is affected by the provisions of Part IV of Division First of this code, unless such corporation elects to continue its existence under it as provided in section two hundred and eighty-seven; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section.

History: Enacted March 21, 1872.

§ 289. **NAME OF INSTRUMENT CREATING CORPORATION.** The instrument by which a private corporation is formed is called "articles of incorporation."

History: Enacted March 21, 1872.

§ 290. ARTICLES OF INCORPORATION. WHAT THEY MUST SET FORTH. NUMBER OF DIRECTORS MAY BE INCREASED OR DIMINISHED. Articles of incorporation must be prepared, setting forth:

1. The name of the corporation.

2. The purpose for which it is formed.

3. The place where its principal business is to be transacted.

4. The term for which it is to exist, not exceeding fifty years.

5. **The number of its directors or trustees,** which shall not be less than three, and the names and residences of those who are appointed for the first year; provided, that the corporate powers, business, and property of corporations formed, or to be formed for purposes other than profit, may be exercised, conducted, and controlled by a board, consisting of such number of directors as may be in the constitution and by-laws provided; and corporations so formed may, in their constitution or by-laws, provide for the length of time that the directors, or any number thereof, shall act, and may in like manner provide that certain directors, or a certain number of the board of directors, to be selected by the corporation or the board of directors, in the mode and manner provided in the constitution or by-laws, shall act for any specified length of time, or otherwise, as shall be in the constitution or by-laws set forth.

6. **The amount of its capital stock,** and the number of shares into which it is divided and the par value thereof. Corporations formed for profit, pursuant to the provisions of this code, may, by their articles of incorporation, provide for the classification of their capital stock into preferred and common stock. In the event that the articles of incorporation shall provide for such classification the same must contain a statement of the number of shares of a stock to which preference is granted, and the number of shares of stock to which no preference is granted. The articles of incorpora-

tion shall also state, in clear and succinct manner, the nature and extent of the preference granted, and except as to the matters and things so stated, no distinction shall exist between said classes of stock or the owners thereof; provided, however, that no preference shall be granted nor shall any distinction be made between the classes of stock either as to voting power or as to the statutory or constitutional liability of the holders thereof to the creditors of the corporation; and provided, further, that the preferred and common shares shall be of the same par value.

7. If there is a capital stock, the amount actually subscribed, and by whom.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 199; April 1, 1876, Code Amdts. 1875-6, p. 70, April 16, 1880, Code Amdts. 1880 (C. C. pt.), p. 11; March 31, 1891, Stats. and Amdts. 1891, p. 285; March 20, 1905, Stats. and Amdts. 1905, p. 502; March 18, 1907, Stats. and Amdts. 1907, p. 347, Kerr's Stats. and Amdts. 1906-7, p. 401; June 1, 1915, Stats. and Amdts. 1915, p. 1481. **In effect** August 8, 1915.

§ 290a. **MINIMUM CAPITAL REQUIRED TO BE PAID IN BY CERTAIN CORPORATIONS.** Before the secretary of state issues any certificate of incorporation to any corporation, authorized in its articles of incorporation to conduct the business of acting as executor, administrator, guardian of estates, assignee, receiver, depositary, or trustee under appointment of any court or by authority of any law of this state, or as trustee for any purpose permitted by law, and before he files any amended articles of incorporation authorizing such purposes if the principal place of business of such corporation is in a city of which the population does not exceed one hundred thousand persons, there must be filed in his office the affidavit of all the directors of such corporation that at least one hundred thousand dollars of the capital stock has actually been subscribed and paid in in cash to a person named in such affidavit, for the conduct of such trust business and for the exclusive benefit and pro-

tection of the creditors of such trust business, and if the principal place of business is in a city, the population of which exceeds one hundred thousand persons, there must be filed in his office the affidavit of all the directors of such corporation that at least two hundred thousand dollars of the capital stock has actually been subscribed and paid in in cash to a person named in such affidavit, for the conduct of such trust business and for the exclusive benefit and protection of the creditors of such trust business and before he issues any certificate of incorporation to any corporation authorized in its articles of incorporation to engage in the business of banking, or of receiving the money of others on deposit, there must in like manner be filed the affidavit herein that a capital stock, as follows, has actually been subscribed, and paid in in cash to a person named in such affidavit, for the benefit of the corporation:

[Capital stock.] (a) In any locality in which the population does not exceed five thousand persons, not less than twenty-five thousand dollars if it is incorporated to transact either a commercial or savings business or both, or not less than one hundred twenty-five thousand dollars if it is incorporated to transact both a commercial and trust business, or not less than one hundred twenty-five thousand dollars if it is incorporated to transact both a savings and trust business and not less than one hundred twenty-five thousand dollars if it is incorporated to transact a commercial, savings and trust business.

(b) In any city in which the population is more than five thousand persons but does not exceed twenty-five thousand persons, not less than fifty thousand dollars if it is incorporated to transact either a commercial or savings business or both, or not less than one hundred fifty thousand dollars if it is incorporated to transact both a commercial and trust business, or not less than one hundred fifty thousand dollars if it is incorporated to transact both a savings and trust business, and not less than one hundred fifty thousand dol-

lars if it is incorporated to transact a commercial, savings and trust business.

(c) In any city in which the population is more than twenty-five thousand persons, but does not exceed one hundred thousand persons, not less than one hundred thousand dollars if it is incorporated to transact either a commercial or savings business or both, or not less than two hundred thousand dollars if it is incorporated to transact both a commercial and trust business, or not less than two hundred thousand dollars if it is incorporated to transact both a savings and trust business, and not less than two hundred thousand dollars if it is incorporated to transact a commercial, savings and trust business.

(d) In any city in which the population is more than one hundred thousand persons but does not exceed two hundred thousand persons, not less than two hundred thousand dollars if it is incorporated to transact either a commercial or savings business or both, or not less than four hundred thousand dollars if it is incorporated to transact both a commercial and trust business, or not less than four hundred thousand dollars if it is incorporated to transact both a savings and trust business, and not less than four hundred thousand dollars if it is incorporated to transact a commercial, savings and trust business.

(e) In any city in which the population exceeds two hundred thousand persons, not less than three hundred thousand dollars if it is incorporated to transact either a commercial or savings business or both, or not less than five hundred thousand dollars if it is incorporated to transact both a commercial and trust business, or not less than five hundred thousand dollars if it is incorporated to transact both a savings and trust business, and not less than five hundred thousand dollars if it is incorporated to transact a commercial, savings and trust business.

[Determination of population.] For the purposes of this section, the population shown and determined by the last preceding federal census, or any subsequent census compiled

and certified under any law of this state, shall be deemed to be the population of any city in which such corporation is to be organized. If the principal place of business of any corporation so organized is located outside of the corporate limits of any city, then the population of that portion of the judicial township in which said corporation is to have its principal place of business, which is not included within the boundaries of any municipal corporation, as such population is shown and determined by such federal or subsequent official census, shall be the basis for classifications under the provisions of this section.

[Approval of superintendent of banks.] Before the secretary of state shall issue any certificate of incorporation to any corporation specified in this section and before he files any amended articles of incorporation or other certificate increasing or decreasing the capital stock, extending or shortening the corporate existence or increasing or decreasing the number of directors of any such corporation there must be attached to said certificates or amendments the approval of the superintendent of banks.

History: Enacted March 21, 1907, Stats. and Amdts. 1907, p. 482, Kerr's Stats. and Amdts. 1906-7, p. 402; amended March 13, 1909, Stats. and Amdts. 1909, p. 300; May 8, 1913, Stats. and Amdts. 1913, p. 201; June 3, 1915, Stats. and Amdts. 1915, p. 1136. **In effect** August 8, 1915.

§ 291. CERTAIN CORPORATIONS TO STATE FURTHER FACTS IN ARTICLES. The articles of incorporation of any railroad, wagon-road, or telegraph organization must also state:

1. The kind of road or telegraph intended to be constructed;

2. The place from and to which it is intended to be run, and all the intermediate branches;

3. The estimated length of the road or telegraph line;

4. That at least ten per cent of the capital stock subscribed has been paid in to the treasurer of the intended corporation.

History: Enacted March 21, 1872.

§ 292. **HOW EXECUTED. [SUBSCRIPTION AND ACKNOWLEDGMENT.]** The articles of incorporation must be subscribed by three or more persons, a majority of whom must be residents of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments or [of] conveyances of real property.

The signature of each person named in said articles of incorporation as directors of such corporation shall be affixed to said articles of incorporation and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 199; March 20, 1905, Stats. and Amdts. 1905, p. 503; April 26, 1911, Stats. and Amdts. 1911, p. 1112.

§ 293. **PREREQUISITE TO FILING ARTICLES. AMOUNTS TO BE SUBSCRIBED TO BE FIXED.** Each intended corporation named in section two hundred and ninety-one, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amounts, to wit:

1. One thousand dollars per mile of railroads;
2. One hundred dollars per mile of telegraph lines;
3. Three hundred dollars per mile of wagon roads.

History: Enacted March 21, 1872.

§ 294. **PREREQUISITE TO FILING ARTICLES OF INCORPORATIONS FOR PROFIT.** Before the articles of incorporation of any corporation referred to in the pre-

ceding section are filed, there must be paid for the benefit of the corporation, to a treasurer elected by the subscribers, ten per cent of the amount subscribed.

History: Enacted March 21, 1872.

§ 295. **OATH OF OFFICER TO SUBSCRIPTION OF STOCK AND PAYMENT OF TEN PER CENT.** Before the secretary of state issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary, or treasurer named in the articles, that the required amount of the capital stock thereof has been actually subscribed, and ten per cent thereof actually paid to a treasurer for the benefit of the corporation.

History: Enacted March 21, 1872.

§ 296. **ARTICLES OF INCORPORATION. CORPORATE NAMES MUST NOT BE DUPLICATED NOR CLOSELY IMITATED.** Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof certified by the county clerk with the secretary of state, and the affidavit mentioned in the last section where such affidavit is required, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles containing the required statement of facts has been filed in his office, and thereupon the persons signing the articles and their associates and successors shall be a body politic and corporate by the name stated in the certificate, and for the term of fifty years, unless it is, in the articles of incorporation, otherwise stated, or in this code otherwise specially provided;

[Not to file copy of copy.] Provided, however, that the secretary of state shall not file any copy of the copy of any articles, or issue any certificate of incorporation to

any corporation, which articles set forth the corporate name of any corporation heretofore organized in this state, or file any copy of any articles, or issue any certificate of incorporation to any corporation existing at the time of filing said articles, which articles set forth a name so closely resembling the name of such corporation as will tend to deceive. The secretary of state shall issue and file in his office a duplicate of the certificate hereinabove provided for and copies thereof, duly certified by the secretary of state, shall have the same force and effect in evidence as the original.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 199; March 23, 1901, Stats. and Amdts. 1900-1, p. 629; June 1, 1915, Stats. and Amdts. 1915, p. 1039. **In effect** August 8, 1915.

§ 297. **COPY OF ARTICLES PRIMA FACIE EVIDENCE.** A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, or by the county clerk of the county where the original articles shall have been filed, must be received in all the courts of this state, and other places, as prima facie evidence of the facts therein stated.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 200; March 8, 1895, Stats. and Amdts. 1895, p. 30. **In force** March 8, 1895.

§ 297a. **RESTORATION OF LOST ORIGINAL ARTICLES OF INCORPORATION.** Whenever the articles of incorporation of any corporation have been, or may hereafter be, destroyed by conflagration or other public calamity, a copy of the certified copy of the articles of incorporation of such corporation filed in the office of the secretary of state pursuant to the provisions of section two hundred ninety-six of this code, duly certified by such secretary of state, may be filed in the office of the county clerk of the

county where such articles of incorporation were on file at the time of their loss or destruction. Any such copy filed pursuant to this section shall have the same force and effect as the document so lost or destroyed.

History: Enacted June 16, 1906, Stats. and Amdts. 1906, p. 83, Kerr's Stats. and Amdts. 1906-7, p. 403. **In effect** immediately.

§ 298. **WHO ARE MEMBERS AND WHO STOCKHOLDERS OF A CORPORATION.** The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

History: Enacted March 21, 1872.

§ 299. **WHEN MEMBERS DIE SUCCESSORS TO BE ELECTED** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 200.

§ 299 [a]. **COPIES OF ARTICLES MUST BE FILED IN EVERY COUNTY WHEREIN THE CORPORATION ACQUIRED PROPERTY, ETC.** No corporation hereafter formed must purchase, locate, or hold property, in any county in this state, other than the county in which its original articles of incorporation are filed, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this state

in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquires any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies filed with the several county clerks, and certified copies thereof, have the same force and effect in evidence as the originals.

Any corporation failing to comply with the provisions of this section cannot maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation, are filed at the places directed by the general law and this section; provided, that all corporations are liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; and provided further, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same.

History: Enacted April 3, 1876, Code Amdts. 1875-6, p. 71; amended March 23, 1878, Code Amdts. 1877-8, p. 76; April 23, 1880, Code Amdts. 1880 (C. C. pt.), p. 13; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 344, held unconstitutional; see history, § 4 ante; amendment reenacted March 21, 1905, Stats. and Amdts. 1905, pp. 556-557.

§ 300. CAPITAL STOCK OF BANKING CORPORATIONS—DIVIDENDS. Every corporation that has been or may be created under the general laws of this state, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor, in the same manner as corporations formed

under the provisions of chapter one, article one, of the civil code, relating to the formation of corporations; provided, that no such corporation shall use or convert any moneys or funds theretofore belonging to it, or under its control, into capital stock; but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided.

Notice of the time and place of holding such meeting, and its object, must be given by the president of such corporation, by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of the meeting.

A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the offices of the secretary of state and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock; and provided further, that no bank in this state shall ever pay any dividend upon so-called guaranty notes, nor upon any stock, except upon the amount actually paid in money into said capital upon such stock, and any payment made in viola-

tion of this provision shall render all officers and directors consenting to the same jointly and severally liable to the depositors to the extent thereof.

History: Enacted March 29, 1878, Code Amdts. 1877-8, pp. 77-78.

§ 300a. **COPY OF DECREE TO BE FILED WITH SECRETARY OF STATE.** Every corporation which has changed its name under the provisions of sections one thousand two hundred and seventy-five, one thousand two hundred and seventy-six, one thousand two hundred and seventy-seven, one thousand two hundred and seventy-eight, and one thousand two hundred and seventy-nine of the Code of Civil Procedure, must file in the office of secretary of state and in the office of the county clerk of each county in which the original articles or certified copies thereof are required by law to be filed, a certified copy of the decree of the court changing such name.

History: Enacted March 20, 1903, Stats. and Amdts. 1903, p. 256. in force March 20, 1903; amended April 16, 1909, Stats. and Amdts. 1909, p. 973.

ARTICLE II.

BY-LAWS, DIRECTORS, ELECTORS, AND MEETINGS.

§ 301. By-laws. [Adoption of, when, how, and by whom].
§ 302. Directors, election of, etc. [Notice].
§ 302a. Financial statement to stockholders upon request of ten per cent.
§ 303. By-laws, for what may provide.
§ 304. By-laws recorded and how amended.
§ 305. Corporate powers and business exercised by board of directors. Quorum.
§ 306. Election of directors and adoption of by-laws [repealed].
§ 307. Election of directors, how conducted. Cumulative voting not denied.
§ 308. Organization of board of directors, etc. [Quorum].
§ 309. Dividends from surplus profits. Penalty for violation of this section. Distribution of land, water, etc.
§ 310. Removal from office of directors, etc.
§ 311. Justice of peace may order meeting of corporation, when.
§ 312. Majority of stock must be represented at elections, and a majority vote together, otherwise voidable.
§ 312[a].[Same]. Corporations other than for profit.
§ 313. Stock of minors, insane, etc., how represented.
§ 314. Election may be postponed.
§ 315. Complaints, quo warranto and proceedings thereon, regarding elections. [Notice].
§ 316. Damages for false entries, etc.
§ 317. Meeting by consent to be valid. [Written waiver].
§ 318. Proceedings at meeting to be binding.
§ 319. Meetings, where held.
§ 320. When no provision in by-laws for regular meetings, special meetings, how called. [Notice.]
§ 320a. Waiver of notice of corporation meeting.
§ 321. Certain books to be open for inspection.
§ 321a. Change of principal place of business, procedure.
§ 321b. Stockholders' meeting, who may vote at. Proxies, void when; maximum period of; revocable.

§ 301. BY-LAWS. [ADOPTION OF, WHEN, HOW, AND BY WHOM.] Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two thirds of the stock, or of two thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 200-201; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 344, held unconstitutional; see history, § 4 ante.

§ 302. DIRECTORS, ELECTION OF, ETC. [NOTICE]. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given as prescribed in section three hundred one, unless all of the stockholders waive such notice in writing.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 345, act held unconstitutional, see history, § 69 ante; amendment reenacted March 21, 1905, Stats. and Amdts. 1905, p. 557; amended February 22, 1909, Stats. and Amdts. 1909, p. 48.

§ 302a. FINANCIAL STATEMENT TO STOCKHOLDERS UPON REQUEST OF TEN PER CENT. Upon the written request of not less than ten per cent of the stockholders, presented not less than two weeks prior to the time of the election provided for by section three hundred two of this code, there must be served upon each stockholder, at least one week prior to such election, one copy of a financial statement of the affairs of the corporation, which must show the authorized capital stock of the corporation, the amount of capital stock subscribed, the amount of capital actually paid in, the assets and the surplus and undivided profits of the corporation and the amount of the last annual, semi-an- addresses of all the officers and directors of the corporation, the amount of mortgages, bonded or other indebtedness of the corporation and the amount of the last annual, semi-annual or quarterly dividend, and a general summary of the business transacted by the corporation since the last preceding annual meeting. The financial statement herein referred to shall be signed by the president and secretary of the corporation and shall be sworn to by such officers before some officer authorized by law to administer oaths, and must be personally served upon each stockholder or, in lieu of personal service, must be sent by mail addressed to each stockholder at his place of residence if known, or if not known, at the place where the principal office of the corporation is situated. The president or secretary of any corporation who with intent to deceive shall sign a false financial statement shall be deemed guilty of a misdemeanor.

History: Enactment approved June 7, 1915, Stats. and Amdts. 1915, p. 1271. **In effect** August 8, 1915.

§ 303. BY-LAWS, FOR WHAT MAY PROVIDE. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of stockholders or directors.

2. The number of stockholders or members constituting a quorum.

3. The mode of voting by proxy.

4. The qualifications and duties of directors, and also the time of their annual election, and the mode and manner of giving notice thereof.

5. The compensation and duties of officers.

6. The manner of election and tenure of office of all officers other than the directors; and,

7. Suitable penalties for violations of by-laws, not exceeding in any case one hundred dollars for any one offense.

8. The newspaper in which all notices of the meetings of stockholders or board of directors, notice of which is required, shall be published, which must be some newspaper published in the county where the principal place of business of the corporation is located, or if none is published therein, then in a newspaper published in an adjoining county; provided, that when the by-laws prescribe the newspaper in which said publication shall be made, if from any cause at the time any publication is desired to be made, the publication of such newspaper shall have ceased, the board of directors may, by an order entered on the records of the corporation, direct the publication to be made in some other newspaper published in the county, or if none is published therein, then in an adjoining county.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 201; March 19, 1889, Stats. and Amdts. 1889, p. 365; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 345, held unconstitutional; see history, § 4 ante.

§ 304. BY-LAWS RECORDED AND HOW AMENDED. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a

legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and the book must then be open to the inspection of the public during office hours each day except holidays.

The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two thirds of the subscribed stock, or by two thirds of the members. The written assent of the holders of two thirds of the stock, or two thirds of the members if there is no capital stock, is effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members.

Whenever any amendment or new by-law is adopted, it must be copied in the book of by-laws with the original by-laws, and immediately after them. If any by-law is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, must be stated in said book. Until copied or stated as hereinbefore required, no by-law, nor any amendment or repeal thereof, can be enforced against any person, other than the corporation, not having actual notice thereof.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 201; March 14, 1885, Stats. and Amdts. 1885, pp. 130-131; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 345, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 557.

§ 305. CORPORATE POWERS AND BUSINESS EXERCISED BY BOARD OF DIRECTORS. QUORUM. The corporate powers, business, and property of all corporations

formed under this title must be exercised, conducted, and controlled by a board of not less than three directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporations; except that corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith, the leasing of stores and offices in such building or buildings for other purposes, the corporate powers, business, and property thereof may be conducted, exercised, and controlled by a board [of] not less than three or more than fifty directors, to be chosen from among the stockholders of such corporation or from among the members of such order or organization. A majority of the directors must be in all cases residents of this state. Directors of corporations for profit must be holders of stock therein to an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof.

Unless a quorum is present and acting no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

History: Enacted March 21, 1872; amended January 20, 1876, Code Amdts. 1875-6, p. 71; March 15, 1901, Stats. and Amdts. 1900-1, pp. 308-309; amended by Code Commission, Act March 20, 1905, Stats. and Amdts. 1905, p. 503, by changing number of directors from five to three (and negligently omitting an "of").

Code Commission has needlessly bungled and confused by introducing in a very disjointed shape the main provisions in this section into par. 5, § 290 ante.

§ 306. ELECTION OF DIRECTORS AND ADOPTION OF BY-LAWS [repealed].

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 202; repealed March 19, 1889, Stats. and Amdts. 1889, p. 365.

§ 307. ELECTIONS OF DIRECTORS, HOW CONDUCTED. CUMULATIVE VOTING SHALL NOT BE DENIED. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section three hundred and twelve of this code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The provisions of this section, so far as it relates to cumulative voting, shall apply to all corporations and associations doing business in this state, having a capital stock or shares of stock, and electing directors by a meeting of stockholders held in this state, whether such corporations or associations are organized under the laws of this state or not, and no election for directors of any corporation or association, doing business in this state, and electing directors in this state, shall be valid, if the right of a stockholder to cumulate his shares as herein provided shall be denied.

In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all the candidates. In any case the director receiving the highest number of votes shall be declared elected.

[Cumulative voting not applicable, when.] The provisions of this section, so far as it elates to cumulative voting, shall not apply to literary, religious, scientific, social or benevolent societies, having no capital stock or shares unless it shall be so provided in their by-laws or rules.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 202; Feb. 1, 1878, Code Amdts. 1877-8, p. 78; March 10, 1887, Stats. and Amdts. 1887, p. 95; March 20, 1903, Stats. and Amdts. 1903, p. 253.

§ 308. **ORGANIZATION OF BOARD OF DIRECTORS, ETC. [QUORUM.]** Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation.

[Quorum.] A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

History: Enacted March 21, 1872.

§309. **DIVIDENDS FROM SURPLUS PROFITS. PENALTY FOR VIOLATION OF THIS SECTION. DISTRIBUTION OF LAND, WATER, ETC.** The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they create any debts beyond their subscribed capital stock; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock, except as hereinafter provided, nor reduce or increase the capital stock, except as herein specially provided.

For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual or private capacity, jointly and severally liable to the corporation, and to the creditors thereof, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitation is a bar to any suit against such directors for any sums for which they are liable by this section;

[Land and water companies.] Provided, however, that where a corporation has been heretofore or may hereafter be formed for the purpose, among other things, of acquiring,

holding, and selling real estate, water, and water rights, the directors of such corporation may, with the consent of stockholders representing two thirds of the capital stock thereof, given at a meeting called for that purpose, divide among the stockholders the land, water, or water rights so by such corporation held, in the proportions to which their holdings of such stock at the time of such division entitle them.

All conveyances made by the corporation in pursuance of this section must be made and received subject to the debts of such corporation existing at the date of the conveyance thereof. Nothing herein prohibits a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence.

History: Enacted March 21, 1872; amended March 31, 1891, Stats. and Amdts. 1891, p. 468; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 346, held unconstitutional; see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 558.

§ 310. **REMOVAL FROM OFFICE OF DIRECTORS, ETC.** The board of directors may be removed from office by a vote of two thirds of the members, or of stockholders holding two thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided

in section three hundred and one of this title, unless other express provision has been made therefor in the by-laws. In case the board of directors is so removed, a new board may be elected at the same meeting.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 347, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, pp. 558, 559.

§ 311. **JUSTICE OF PEACE MAY ORDER MEETING OF CORPORATION, WHEN.** Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat. The application of a number of stockholders less than three, but holding a majority of the capital stock, has the same effect as an application by three or more stockholders or members.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 347; held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 559.

§ 312. **MAJORITY OF STOCK MUST BE REPRESENTED AT ELECTIONS, AND A MAJORITY VOTE TOGETHER, OTHERWISE VOIDABLE.** At all elections or votes had for any purpose in corporations formed for profit there must be a majority of the subscribed capital stock or of the members represented, either in person or by proxy

in writing; provided, that in all instances of corporations formed for purposes other than profit the by-laws shall provide the number of members or stockholders that shall constitute a quorum for the transaction of business. Every person acting therein, in person or by proxy or representative, must be a member thereof or a stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent or any stockholder or members, and may be set aside by petition to the superior court of the county where the same is held.

[Meeting may adjourn from day to day.] Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.

History: Enacted March 21, 1872; amended April 1, 1878, Code Amdts. 1877-8, p. 79; amended by Code Commission Act March 16, 1901, Stats. and Amdts. 1900-1, p. 347, held unconstitutional, see history, § 69 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 559. A further amendment by the Legislature of 1905, on following day (March 22), appears in "note" below; amendment enacted March 18, 1907, Stats. and Amdts. 1907, p. 596, Kerr's Stats. and Amdts. 1906-7, p. 403.

Note: Section 312 was amended March 21, 1905, and also on March 22, 1905, numbered respectively § 312 and § 312[a] in **Kerr's Cyclopedic** and **Pocket Codes.** The Legislature of 1907 repealed § 312 as amended March 21, 1905, and amended § 312[a] as above, and numbered it § 312.

§ 312 [a] [SAME]. CORPORATIONS OTHER THAN FOR PROFIT. At all elections or votes had for any purpose in corporations formed for profit there must be a majority of the subscribed capital stock or of the members

represented, either in person or by proxy in writing; provided, that in all instances of corporations formed for purposes other than profit the by-laws shall provide the number of members or stockholders that shall constitute a quorum for the transaction of business. Every person acting therein (in person or by proxy or representative), must be a member thereof or a bona fide stockholder, having stock in his own name on the stock-books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent (or any) stockholders or members, and may be set aside by petition to the superior court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.

History: Enactments and amendments recited in section above. This amendment, March 22, 1905, Stats. and Amdts. 1905, p. 787.

§ 313. **STOCK OF MINORS, INSANE, ETC., HOW REPRESENTED.** The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator, and, except when otherwise agreed, all shares of stock standing on the books of a corporation in the name of any person as pledgee or trustee, may be represented or voted by such pledgee or trustee only when such pledgor or beneficial owner fails to represent and vote the same.

History: Enacted March 21, 1872; amended March 31, 1874, Code Amdts. 1873-4, p. 203; March 9, 1911, Stats. and Amdts. 1911, p. 318.

§ 314. ELECTION MAY BE POSTPONED. If from any cause an election does not take place on the day appointed by law or the by-laws, or otherwise, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section three hundred and ten.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 348, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 559.

§ 315. COMPLAINTS, QUO WARRANTO AND PROCEEDINGS THEREON, REGARDING ELECTIONS. [NOTICE]. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the superior court of the county in which such election is held must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice

[Notice]. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party, or those to be affected thereby.

History: Enacted March 21, 1872; amended April 1, 1878, Code Amdts. 1877-8, p. 79; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 248, held unconstitutional; see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 560.

§ 316. **DAMAGES FOR FALSE ENTRIES, ETC.** Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby, and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 203.

§ 317. **MEETING BY CONSENT TO BE VALID. [WRITTEN WAIVER.]** When all the stockholders or members of a corporation are present at any meeting however called or notified, and sign a written consent thereto on the records of such meetings, or if those not present sign in writing a waiver of notice of such meeting, which waiver is presented and made a part of the records of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed.

History: Enacted March 21, 1872; amended February 22, 1909, Stats. and Amdts. 1909, p. 49.

§ 318. **PROCEEDINGS AT MEETING TO BE BINDING.** The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

History: Enacted March 21, 1872.

§ 319. **MEETINGS, WHERE HELD.** The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

History: Enacted March 21, 1872.

§ 320. **WHEN NO PROVISION IN BY-LAWS FOR REGULAR MEETINGS, SPECIAL MEETINGS, HOW CALLED. [NOTICE].** When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

History: Enacted March 21, 1872.

§ 320a. **WAIVER OF NOTICE OF CORPORATION MEETING.** When all the directors of a corporation are present at any directors' meeting, however called or noticed, and sign a written consent thereto, on the record of such meeting, or if the majority of the directors are present, and if those not present sign in writing a waiver of notice of such meeting, which waiver is presented and made a part of the records of such meeting, the transactions of such meeting are as valid as if had at a meeting regularly called and noticed.

History: Enactment approved May 29, 1915, Stats. and Amdts. 1915, p. 939. **In effect** August 8, 1915.

§ 321. **CERTAIN BOOKS TO BE OPEN FOR INSPECTION.** Every corporation doing a banking business in this state must keep in its office, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of all stockholders in such corporation, and the number of shares of stock held by each, and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice, signed by the president or secretary, showing:

1. The names of the directors of such corporation.

2. The number and value of shares of stock held by each director.

The entries on such book and such notice shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each. The provisions of this section shall apply to all banking corporations formed or existing before twelve o'clock noon of the day on which this code took effect, as well as to those formed after such time.

History: Enacted Jan. 29, 1876, Code Amdts. 1875-6, p. 72.

§ 321a. **CHANGE OF PRINCIPAL PLACE OF BUSINESS, PROCEDURE.** Every corporation that has been or may be created under the general laws of this state may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this state. Before such change is made, the

Consent in writing, of the holders of two thirds of the capital stock of the corporation must be obtained and filed in its office. When such consent is obtained and filed, notice of the intended removal or change must be published, at least once a week, for three successive weeks, in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated and that to which it is intended to remove it.

[Copy of resolution, etc., to be filed.] Whenever any such change is made, a copy of the resolution or action of the board of directors authorizing the same together with a copy of an affidavit of the publication above required, all duly certified by the president and secretary of the corporation with the corporate seal affixed shall be filed in each office where the original articles of incorporation are, or any copy thereof is required to be filed.

[Removal of location in same town.] This section shall not be construed to require such consent, notice or publication in the case of any such removal from one location to another in the same city, town or village.

History: Enacted April 3, 1876 (as § 321), Code Amdts. 1875-6, p. 73; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 348, held unconstitutional; see history, § 4 ante; re-enacted March 20, 1903, Stats. and Amdts. 1903, p. 254.

§ 321b. STOCKHOLDERS' MEETINGS, WHO MAY VOTE AT. PROXIES, VOID WHEN; MAXIMUM PERIOD OF; REVOCABLE. At all meetings of stockholders of corporations organized under the laws of this state, or in the case of corporations having no capital stock, then at all meetings of the members of such corporation, only the stockholders or members actually present shall be entitled to vote on any proposition, including the election of directors and other officers of the corporation, unless proxies from absent or non-attending stockholders or members shall be held by some person or persons present at such meeting and shall be executed in accordance with the provisions of this section.

[Proxy.] Every such proxy must be executed in writing by the member or stockholder himself, or by his duly authorized attorney. No proxy heretofore given or made shall be valid after the expiration of eleven months from the passage of this act, unless the member or stockholder executing it shall have specified therein the length of time for which such proxy is to continue in force, which must be for some limited period, and in no case to exceed seven years from the date of the execution of such proxy. No proxy hereafter to be given or made shall be valid after the expiration of eleven months from the date of its execution, unless the member or stockholder executing it shall have specified therein the length of time for which such proxy is to continue in force, which must be for some limited period, and in no case to exceed seven years from the date of the execution of such proxy.

[Revocation of proxy.] Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which such proxies may be executed. Executors, administrators, guardians and trustees may give proxies.

History: Enacted February 27, 1905, Stats. and Amdts. 1905, p. 22; amended May 20, 1913, Stats. and Amdts. 1913, p. 230. **In effect** August 10, 1913.

CHAPTER II.

CORPORATE STOCK.

Article I. Stock and Stockholders, §§ 322-328.
II. Assessment of Stock, §§ 331-349.

ARTICLE I.

STOCK AND STOCKHOLDERS.

§ 322. Liability of stockholders; released when; how determined; trust fund not liable; stock held as collateral.
§ 323. Certificates, how and when issued.
§ 324. Shares of stock, personal property; how transferred. Irrigation stock appurtenant to lands.
§ 325. Married woman may transfer stock; dividends paid to her; her proxy.
§ 326. Affidavit or bond may be required before transfer.
§ 327. Contracts to relieve directors from liabilities fixed by constitution void.
§ 328. Lost, etc., certificate; action for new certificate; parties; procedure.
§ 329. Burned bonds, procedure to obtain duplicates.

§ 322. LIABILITY OF STOCKHOLDERS; RELEASED WHEN; HOW DETERMINED; TRUST FUND NOT LIABLE; STOCK HELD AS COLLATERAL. Each stockholder of a corporation is individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation.

Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the

court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith.

If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it must be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him.

The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock.

The term stockholder, as used in this section, applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the instalments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock.

Trust funds in the hands of a guardian, or trustee, are not liable under the provisions of this section, by reason of any such investment; nor must the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period.

Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but

the pledgeor, or person or estate represented, is to be deemed the stockholder, as respects such liability.

In a corporation having no capital stock, each member is individually and personally liable for an equal share of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered.

[Foreign corporations—Liability of stockholders.] The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, is the same as the liability of a stockholder of a corporation created under the constitution and laws of this state.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 203; March 15, 1876, Code Amdts. 1875-6, p. 73; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 349, held unconstitutional; see history, § 4 ante; amendment re-enacted March 20, 1905, Stats. and Amdts. 1905, p. 396.

§ 323. **CERTIFICATES OF STOCK, HOW AND WHEN ISSUED.** All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to full payment, under such restrictions and for such purposes as their by-laws may provide, but any certificate issued prior to full payment must show on its face what amount has been paid thereon. All certificates of stock issued by corporations authorized by their articles of incorporation to issue stocks of different classes, shall express upon their face the character of stock represented by said certificates. The said certificates shall also state the number of shares of stock of each class which said corporation is authorized to issue, and the said certificates shall also

contain a statement of the nature and extent of the preference granted to the preferred stock.

History: Enacted March 12, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 350, held unconstitutional, see history, § 69 ante; amendment re-enacted March 20, 1905, Stats. and Amdts. 1905, p. 397; amended March 18, 1907, Stats. and Amdts. 1907, p. 348, Kerr's Stats. and Amdts. 1906-7, p. 403.

§ 324. **SHARES OF STOCK, PERSONAL PROPERTY; HOW TRANSFERRED. IRRIGATION STOCK APPURTENANT TO LAND.** Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock, except as hereinafter provided, are personal property, and may be transferred by indorsement by signature of the proprietor, his agent, attorney, or legal representative, and the delivery of the certificate; but such transfer is not valid, except as to the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number or designation of the shares, and the date of the transfer.

[Water companies—Stock appurtenant to land.] Provided, however, that any corporation organized for, or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or for domestic use, may in its by-laws provide that water shall only be sold, distributed, supplied, or delivered to owners of its capital stock, and that such stock shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate shall be so issued, and a certified copy of such by-law recorded in the office of the county recorder in the county where such lands are situated, the shares of stock so located on any land shall only be transferred with said lands, and shall pass as an appurtenance thereto. Whenever any officer of any corporation shall refuse to make en-

tries upon the books thereof, or to transfer stock therein, or to issue a certificate or certificates therefor to the transferee as provided by this and the next preceding section, such officer shall be subject to a penalty of four hundred dollars, to be recovered as liquidated damages, in an action brought against him by the person aggrieved.

History: Enacted March 21, 1872; amended March 26, 1895, Stats. and Amdts. 1895, p. 118; amended March 22, 1907, Stats. and Amdts. 1907, p. 854, Kerr's Stats. and Amdts. 1906-7, p. 404.

This section traceable to Act April 22, 1850, § 12 (Weston vs. Bear River & Auburn W. & M. Co., 5 Cal. 186, 187, 63 Am. Dec. 117; Winter vs. Belmont Min. Co., 53 Cal. 428, 431); the Act of 1853 did not substantially alter § 12 (Weston vs. Bear River & Auburn W. & M. Co., 6 Cal. 425, 429); as to effect of amendatory act of 1854 (p. 84) see People vs. Crockett, 9 Cal. 112, 114.

Wisconsin adopted their statute from this section of the code. —See In re Application of Murphy, 51 Wis. 519, 8 N. W. Rep. 419, 420, 421.

§ 325. MARRIED WOMAN MAY TRANSFER STOCK; DIVIDENDS PAID TO HER; HER PROXY. Shares of stock in corporations standing on the books of the corporation in the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if such married woman were a feme sole. All dividends payable upon any of such shares of stock may be paid to her, her agent or attorney, in the same manner as if she were unmarried; and any proxy or power given by her, touching any of such shares, is valid and binding, and neither it nor any receipt for dividends need be signed by her husband.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 350, held unconstitutional; see history, § 4 ante; amendment reenacted March 20, 1905, Stats. and Amdts. 1905, p. 397.

§ 326. **AFFIDAVIT OR BOND MAY BE REQUIRED BEFORE TRANSFER.** When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties, satisfactory to the officers of the corporation; or, if not so satisfactory, then one approved by a judge of the superior court of the county in which the principal office of the corporation is situated, conditioned to protect the coporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such

Affidavit or other evidence or bond be not furnished when required as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 205; Feb. 16, 1883, Stats. and Amdts. 1883, p. 4. **In force** Feb. 16, 1883.

§ 327. **CONTRACTS TO RELIEVE DIRECTORS FROM LIABILITIES FIXED BY CONSTITUTION VOID.** Any contract or contracts, verbal or written, hereafter made, whereby it is sought directly or indirectly to relieve any director or trustee of any corporation or joint stock association from any liability imposed by section three, of article twelve of the constitution of California, are hereby declared to be and shall be null and void.

History: Enacted April 12, 1880, Code Amdts. 1880, p. 9. **In force** April 12, 1880.

§ 328. **LOST, ETC., CERTIFICATE; ACTION FOR NEW CERTIFICATE; PARTIES; PROCEDURE.** Whenever a certificate of stock or of shares in a corporation organized under the laws of this state has been lost, destroyed or wrongfully withheld, the owner thereof may bring an action against such corporation in the superior court of the county in which is located its principal place of business, for the purpose of obtaining a new or duplicate certificate. If by the books of the corporation the stock stands in the name of a person other than the plaintiff, or if by such books it appears that some other person claims or has some right, title, or interest in, or lien upon, such stock, all such persons must be made parties defendant with the corporation.

[Summons and notice.] Summons must be issued and served as in other civil actions, and in addition thereto, the court must direct its clerk to issue and cause to be published, at least once a week for four successive weeks, in some newspaper published in the county, a notice setting forth the pendency of the action, the names of the parties thereto, the court in which it is pending, the name of the corporation issuing the stock, the number of the certificate and the number of the shares, the name of the person mentioned as stockholder in the certificate, and notifying all persons claiming said shares, or any of them, or any interest or lien therein or thereupon, to be and appear before the court at a time and place to be designated in the notice not less than thirty days from the first publication thereof, then and there to show cause why a new certificate should not be directed to be issued to the plaintiff, and to set forth their rights in or claim to such shares.

[Proceeding on answer—Judgment] If any one appears and answers or intervenes in the action, it must proceed to trial as in other civil cases, and the court must enter judgment as from the facts established may be proper; but if no one appears within the time designated in such notice, nor within the time allowed by law after the service of such

summons, the court must hear such evidence as may be offered in support of the allegations of the complaint, and make and file its decision thereon, and thereupon may enter its judgment canceling the lost, destroyed or wrongfully withheld certificate and directing the corporation, upon payment to it of all costs incurred by it in the premises and without costs against the corporation, to issue to the plaintiff a new or duplicate certificate.

After the issuing of a new certificate by the corporation pursuant to any judgment in such action, no action can ever be maintained by any person against the corporation in reference to said lost or destroyed certificate or the shares represented thereby, and thereafter any such action is forever barred as against the corporation.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 500.

§ 329. **BURNED BONDS, PROCEDURE TO OBTAIN DUPLICATES.** Whenever a bond or bonds of a corporation organized under the laws of this state or of any other state, or any territory of the United States has or have been lost or destroyed in this state by fire, earthquake, or other calamity, the owner thereof may bring an action against such corporation and the trustee or mortgagee of such bonded indebtedness in the superior court of the county in which such bond or bonds were lost or destroyed, or in which owner resides, or in which is located the principal place of business of such corporation for the purpose of obtaining a new or duplicate bond or bonds. If said bond or bonds stand in the name of, or are registered in the name of a person other than the plaintiff, or if it appears by the books of the corporation that any other person claims or has some right, title, interest in, or lien upon such bond or bonds, all such persons must be made parties defendant with the corporation and the trustee and mortgagee.

[Form of summons.] Summons must be issued and served as in other civil actions and in addition thereto the court must direct its clerk to issue and cause to be published at least once a week, for four successive weeks, in some newspaper published in the county a notice seting forth the pendency of the action, the names of the parties thereto, the court in which it is pending, the name of the corporation which had issued the bond or bonds, the number of said bond or bonds, if any, and the amount thereof, and the person in whose name the same stands or is registered, and notifying all persons claiming said bond or bonds, or any of them or any interest or lien therein or thereupon, to be and appear before the court at a time and place to be designated in the notice, not less than thirty days from the first publication thereof, then and there to show cause why a new bond or bonds should not be directed to be issued to the plaintiff and to set forth their rights in, or claims to such bond or bonds. If any one appears and answers or intervenes in the action it must proceed to trial as in other civil cases and the court must enter judgment as from the facts established may be proper; but if no one appears within the time designated in said notice, nor within the time allowed by law after the service of such summons, the court must hear such evidence as may be offered in support of the allegations of the complaint and make and file its decision thereon.

[Entry of judgment—Indemnity.] And thereupon may enter its judgment canceling the lost or destroyed bond or bonds and directing such corporation, upon payment to it of all costs incurred by it in the premises, and upon payment to it of the money required and necessary to re-issue new bond or bonds and without costs against the corporation or other defendant, mortgagee or trustee; to issue to the plaintiff a new or duplicate bond or bonds upon the said plaintiff giving proper indemnity to the said corporation and the said mortgagee or trustee.

History: Enacted March 6, 1907, Stats. and Amdts. 1907, p. 116, Kerr's Stats. and Amdts. 1906-7, p. 404.

ARTICLE II.

ASSESSMENT OF STOCK.

§ 331. Assessments, how levied.
§ 332. Limitation. How levied.
§ 333. Levy of assessment. Old assessment remaining unpaid.
§ 334. What order shall contain.
§ 335. Notice of assessment. Form.
§ 336 Publication and service of notice.
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§ 331. **ASSESSMENTS, HOW LEVIED.** The directors of any corporation formed or existing under the laws of this state, after one fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 206.

§ 332. **LIMITATION. HOW LEVIED.** No one assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount;

2. The directors of railroad corporations may assess the capital stock in instalments of not more than ten per cent per month, unless in the articles of incorporation it is otherwise provided;

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

History: Enacted March 21, 1872.

§ 333. **LEVY OF ASSESSMENT. OLD ASSESSMENT REMAINING UNPAID.** No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment;

2. The collection of the previous assessment has been enjoined; or

3. The assessment falls within the provisions of either the first, second, or third subdivision of section 332.

History: Enacted March 21, 1872.

§ 334. **WHAT ORDER SHALL CONTAIN.** Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of mak-

ing the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

History: Enacted March 21, 1872.

§ 335. **NOTICE OF ASSESSMENT. FORM.** Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

History: Enacted March 21, 1872.

§ 336. **PUBLICATION AND SERVICE OF NOTICE.** The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of

the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 206.

§ 337. DELINQUENT NOTICE. FORM. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of the principal place of business.) Notice.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law (and an order of the board of directors, made on the [date], if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of the secretary, with location of office.)

History: Enacted March 21, 1872, founded upon § 2 Act April 4, 1864, Stats. 1863-4, pp. 492-493.

§ 338. CONTENTS OF NOTICE. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where cer-

tificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

History: Enacted March 21, 1872.

§ 339. **HOW PUBLISHED.** The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale.

When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

History: Enacted March 21, 1872.

§ 340. **JURISDICTION ACQUIRED, HOW.** By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

History: Enacted March 21, 1872.

§ 341. **SALE TO BE BY PUBLIC AUCTION.** On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if pay-

ment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

History: Enacted March 21, 1872.

§ 342. **HIGHEST BIDDER TO BE THE PURCHASER.** The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock-books of the corporation, on payment of the assessment and costs.

History: Enacted March 21, 1872.

§ 343. **IN DEFAULT OF BIDDERS, CORPORATION MAY PURCHASE.** If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

History: Enacted March 21, 1872.

§ 344. **DISPOSITION OF STOCK PURCHASED BY CORPORATION.** All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition

of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

History: Enacted March 21, 1872.

§ 345. **EXTENSION OF TIME OF DELINQUENT STOCK SALE. [NOTICE.]** The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation, or by the secretary, or assistant secretary, of the corporation when delinquent sale is restrained by order of court, or by judge thereof; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

History: Enacted March 12, 1872; amended May 20, 1913, Stats. and Amdts. 1913, p. 229. **In effect** August 10, 1913.

§ 346. **ASSESSMENTS SHALL NOT BE INVALIDATED.** No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in the case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.

History: Enacted March 21, 1872.

§ 347. **ACTION FOR RECOVERY OF STOCK, AND LIMITATION THEREOF.** No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

History: Enacted March 21, 1872.

§ 348. **PROOFS OF PUBLICATION AND SALE.** The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, or the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid.

The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates, signed by the secretary and under the seal of the corporation, are prima facie evidence of the contents thereof.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 207.

§ 349. **WAIVER OF SALE. ACTION TO RECOVER ASSESSMENT.** On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

History: Enacted March 21, 1872.

CHAPTER III.

CORPORATE POWERS.

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ARTICLE I.

GENERAL POWERS.

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§ 354. POWERS OF CORPORATIONS. Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited; and when no period is limited, perpetually;

2. To sue and be sued, in any court;

3. To make and use a common seal, and alter the same at pleasure;

4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited in this part;

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock;

7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or instalments;

8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

History: Enacted March 21, 1872.

§ 355. **LIMITATION OF POWERS.** In addition to the powers enumerated in the preceding section, and to those expressly given in that title of this part under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

History: Enacted March 21, 1872.

§ 356. **BANKING EXPRESSLY PROHIBITED.** No corporation shall create or issue bills, notes, or other evidences of debt, upon loans or otherwise, for circulation as money.

History: Enacted March 21, 1872.

§ 357. MISNOMER DOES NOT INVALIDATE INSTRUMENT. The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

History: Enacted March 21, 1872.

§ 358. TIME IN WHICH MUST BE ORGANIZED, AND CONTINUANCE OF BUSINESS. If a corporation does not organize and commence the transaction of its business, or the construction of its works within one year from the date of its incorporation, or if, after its organization and commencement of its business, it shall lose or dispose of all its property, and shall fail for a period of two years to elect officers and transact, in regular order, the business of said corporation, its corporate powers shall cease, and the said corporation may be dissolved at the instance of any creditor of the said corporation, at the suit of the state, on the information of the attorney-general, but the resumption of its business in good faith by such corporation prior to the commencement thereof shall be a bar to such suit.

[Collateral attack not allowed.] The due incorporation of any company claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney-general; provided, however, as to any company claiming in good faith to be, and which has been doing business for ten consecutive years as a corporation, no such inquiry shall be made either by the state or by any person whatsoever.

History: Enacted March 21, 1872; amended March 23, 1901, Stats. and Amdts. 1900-1, p. 632.

§ 359. INCREASING AND DIMINISHING CAPITAL STOCK. [FICTITIOUS INCREASE OF STOCK VOID.] BONDED INDEBTEDNESS, HOW CREATED OR INCREASED. No corporation shall issue stocks or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness is void. Every corporation may increase or diminish its capital stock, and every corporation, or two or more corporations, may create or increase its or their bonded indebtedness, subject to the following provisions:

1. **[How capital stock may be increased or diminished.]** The capital stock of a corporation may be increased or diminished at a meeting of the stockholders by a vote representing at least two-thirds of the subscribed or issued capital stock, or in the manner otherwise in this section provided; when by meeting as aforesaid, then such meeting must be called by the board of directors or trustees, and notice must be given by publication in a newspaper published in the county or city and county where the principal place of business of the corporation is located, or if there be none published in said county or city and county, then in a newspaper published in an adjoining county, or city and county, such paper to be designated by the board of directors or trustees in the order calling for the meeting; provided, however, that where the articles of incorporation provide for two or more kinds of capital stock, no increase or reduction of capital stock shall be made without the assent of two-thirds of all the subscribed stock, and in making such increase or reduction, the assent shall identify the particular class or classes of stock to be increased or reduced, and the amounts apportioned to each.

2. **[What notice must specify.]** The notice must specify the object of the meeting and the amount to which it is proposed to increase or diminish the capital stock, the time and place of holding the meeting, which latter must be at the principal place of business of the corporation and at the

building where the board of directors or trustees usually meet. The notice herein provided must be published once a week for at least sixty days. The capital stock cannot be diminished to an amount less than the indebtedness of the corporation.

3. **[How bonded indebtedness may be created or increased.]** The bonded indebtedness of a corporation may be created or increased by a vote of the stockholders representing at least two-thirds of the subscribed or issued capital stock at a meeting called by the board of directors of trustees, and after notice of the time and place of the meeting published in the same manner and for the time prescribed, which notice shall state the amount of the bonded indebtedness which it is proposed to create, or the amount to which it is proposed to increase such indebtedness, and shall in all other respects contain the same matters as are above provided and set forth in the notice of meeting to increase or diminish the capital stock; or such original creation of bonded indebtedness may be made as otherwise in this section provided.

4. **[Notification to stockholders.]** In addition to the notice by publication, when proceedings are to be had hereunder at a meeting of stockholders, the secretary of the corporation shall also address a notice to each of the stockholders whose names appear on the company's books as sufficiently addressed or identified, at his place of residence, if known, and if not known, then at the place in which the principal place of business of the corporation is situate, which notice shall be so mailed to such stockholders at least thirty days before the day appointed for such meeting.

5. **[Directors may diminish stock and create indebtedness.]** In lieu of such call for meeting of stockholders and of such notice and publication of the same and of a stockholders' meeting held in pursuance thereof and of said vote thereat representing at least two-thirds of the subscribed capital stock, any corporation may diminish its capital stock and also originally create its bonded indebtedness by a reso-

lution adopted by the unanimous vote of its board of directors or trustees at a regular meeting or at a special meeting called for that purpose and approved by the written assent or assents of the stockholders holding two-thirds of the subscribed or issued capital stock, which assent or assents must be filed with the secretary of the corporation; but the secretary of the corporation must address by mail, postage fully prepaid, a copy of such resolution to each of the stockholders whose names appear upon the company's books as sufficiently addressed or identified, at his place of residence, if known, and if not known, then at the place in which the principal place of business of the corporation is situate, which notice shall be so mailed to such stockholders at least thirty days before the certificate hereinafter provided is made and signed or filed, as hereinafter provided, and within that time any stockholder may file with such secretary his dissent in writing; but it is further provided, that if at any time within said thirty days such written assent or assents of the stockholders holding all of the subscribed or issued capital stock be so filed with said secretary, then and at once and without further delay the certificate hereinafter provided for may be so made, signed and filed as hereinafter provided and with the same effect.

[**Limit of diminution.**] But such capital stock cannot be diminished to an amount less than the indebtedness of the corporation, and no increase of capital stock or bonded indebtedness can be made, except at a meeting of stockholders as in this section provided.

6. [**Consolidated indebtedness.**] Any two or more corporations may by a separate compliance by each corporation with the provisions of this section applicable in the premises in respect to creating or increasing bonded indebtedness, create or increase a consolidated bonded indebtedness of such corporations, to be binding jointly and severally on such corporations, and which may be secured by a consolidated mortgage or deed of trust executed by all such cor-

porations, mortgaging or conveying in trust all or any of the properties of all such corporations, acquired or to be acquired.

7. [Certificate of increase or diminution.] Upon such increase or diminution of the capital stock or creation or increase of the bonded indebtedness being made in accordance with the provisions of this section there shall be made, if proceedings are had under subdivisions first, second, third and fourth above, a certificate under the corporate seal and signed by the president and secretary of the corporation or of each corporation acting in the premises and a majority of the directors or trustees of such corporation, or each corporation so acting, showing a compliance by such corporation, or each corporation so acting, with the requirements of said last-named subdivisions and the amount to which the capital stock has been increased or diminished or the amount of the bonded indebtedness created, or to which the bonded indebtedness may have been increased, and the amount of stock represented at the meeting and the total vote in the affirmative by which the same was accomplished and the total vote in the negative; or if such proceedings be had and taken under subdivision fifth of this section as to diminution of capital stock or original creation of bonded indebtedness a like certificate shall be made and sealed and signed, as aforesaid, showing a compliance by such corporation, and by each corporation acting in the premises, with the requirements of said subdivision fifth, and the amount to which the capital stock has been diminished or the amount of bonded indebtedness so originally created, and the total amount of the stock represented by the said written assent or assents so filed with the secretary and the total amount of stock represented by the said written dissent or dissents so filed. In case of a consolidated bond of indebtedness each corporation which is a party thereto shall cause to be made and signed and sealed and verified and filed, as in this section provided, a separate certificate.

8. [What certificate shall state.] In all cases the certificates shall state the total number of subscribed or issued shares of the capital stock of the corporation, or of each corporation respectively acting in the premises, and shall be verified by the oath of the said president and secretary, or of the said respective presidents and secretaries. Such consolidated bonded indebtedness may be created or increased to an amount equal to the par or face value of the aggregate amount of the subscribed or issued capital stock of said two or more corporations, but shall not exceed such aggregate amount.

[Where filed.] In each and every case the certificate must be filed in the office of the clerk in the county or city and county where the original articles of incorporation of the corporation or corporations acting hereunder are filed and a certified copy thereof, certified by such clerk, shall be filed in the office of the secretary of state; and thereupon the capital stock shall be so increased or diminished, or the bonded indebtedness or consolidated bonded indebtedness shall be created or increased accordingly, and such certificate or certificates so filed shall be, when said certified copy or copies are so filed, conclusive proof of such increase or diminution of capital stock or such creation or increase of bonded or consolidated bonded indebtedness and the validity of each thereof.

[Publication of notices.] When the by-laws of a corporation prescribe the paper in which notices of meetings of directors or trustees or stockholders are to be published the notices of publication herein provided for shall be published in such paper, unless publication thereof shall have ceased.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 207; March 3, 1883, Stats. and Amdts. 1883, p. 31; March 18, 1885, Stats. and Amdts. 1885, p. 141; March 19, 1889, Stats. and Amdts. 1889, p. 364; March 23, 1893, Stats. and Amdts. 1893, p. 191; March 21, 1903, Stats. and Amdts. 1903, p. 347; amended March 18, 1907, Stats. and Amdts. 1907, pp. 439-452, Kerr's Stats. and Amdts. 1906-7, pp. 405-408.

§ 360. **CORPORATIONS MAY ACQUIRE REAL PROPERTY, AND HOW MUCH.** No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property, as provided in title seven, part three, of the Code of Civil Procedure, when needed for any of the uses and purposes mentioned in said title.

By a unanimous vote of all the directors at any regular meeting, any corporation existing, or hereafter to be formed under the laws of this state, may acquire and hold the land and building on and in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 208; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 351, held unconstitutional, see history, § 4 ante; amendment re-enacted March 22, 1905, Stats. and Amdts. 1905, p. 774.

§ 361. **CHANGING NUMBER OF DIRECTORS OF CORPORATION.** Any corporation or association may increase or diminish the number of its directors or trustees by the vote or written assent of stockholders representing a majority of its subscribed capital stock, or, if it has no capital stock, by the vote or written assent of a majority of the members. A certificate over the corporate seal, setting forth the action taken by the stockholders, or members, and stating the new number of directors, shall be signed by the president and secretary of such corporation or association, and filed in the office of the county clerk of the county where its original articles of incorporation were filed, and a copy of said certificate, certified by such county clerk, shall be filed in the office of the secretary of state, whereupon the number

of directors or trustees shall be changed as stated in said certificate.

History: Original section, relating to consolidation of Mining Companies on joining claims, enacted March 21, 1872, amended March 20, 1876, Code Amdts. 1875-6, p. 75, repealed by Code Commission, Act March 18, 1901, Stats. and Amdts. 1900-1, p. 351, Act held unconstitutional, see History, § 4 C. C.; re-repealed March 22, 1905, Stats. and Amdts. 1905, p. 775, present section enacted as a new section and given the same number June 11, 1915, Stats. and Amdts. 1915, p. 1456. **In effect** August 10, 1915.

§ 361a. TRANSFER OF FRANCHISE OF CORPORATION NOT VALID WITHOUT CONSENT OF STOCKHOLDERS. No sale, lease, assignment, transfer or conveyance of the business, franchise and property, as a whole, of any corporation now existing, or hereafter to be formed in this state, shall be valid without the consent of stockholders thereof, holding of record at least two-thirds of the issued capital stock of such corporation; such consent to be either expressed in writing, executed and acknowledged by such stockholders, and attached to such sale, lease, assignment, transfer or conveyance, or by a vote at a stockholders' meeting of such corporation called for that purpose; but with such assent, so expressed, such sale, lease, assignment, transfer or conveyance shall be valid; provided, however, that nothing herein contained shall be construed to limit the power of the directors of such corporation to make sales, leases, assignments, transfers or conveyances of corporate property other than those hereinabove set forth.

History: Enacted March 24, 1903, Stats. and Amdts. 1903, p. 396.

§ 362. AMENDMENT OF ARTICLES OR CERTIFICATE OF INCORPORATION. FILING, PENALTY. Any corporation organized under the laws of this state may

amend its articles of incorporation for any or all of the following purposes:

1. To set forth a new name.

2. To alter or repeal any provision appearing in its original or amended articles of incorporation relative to the purposes for which the corporation is formed, or to set forth, additional powers or purposes.

3. To designate a principal place of business other than the place designated in its original or amended articles of incorporation.

4. To state the date to which its existence has been extended.

5. To state the number of its directors, as increased or diminished.

6. To state the amount of its capital stock as increased or diminished and the number of shares and the par value thereof, or to change the number of shares and their par value or to provide for the classification of its capital stock into preferred and common shares, in which event there must be set forth a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted, also a clear and succinct statement of the nature and extent of the preference granted, and except as to the matters and things so stated, no distinction shall exist between said classes of stock or the owners thereof; provided, however, that no preference shall be granted nor shall any distinction be made between the classes of stock either as to voting power or as to the statutory or constitutional liability of the holders thereof to the creditors of the corporation; and provided, further, that both the preferred and common shares shall be of the same par value.

7. To change the statement appearing in its original or amended articles of incorporation of the nature and extent of such preference, subject to the above limitations.

8. **[Majority vote of directors.]** And generally to provide for any other amendment not contrary to law. The articles of incorporation may be amended as aforesaid by a majority vote of the board of directors of the corporation and by the vote or written assent of the holders of at least two-thirds of the subscribed capital stock of such corporation, or if the corporation has no capital stock then by a majority vote of its board of directors and by the vote or written assent of a majority of the members. Upon the adoption of amended articles of incorporation, a copy of the articles as thus amended shall be certified to as correct by the president and secretary and a majority of the directors of the corporation and the corporate seal of such corporation shall be affixed to the certificate. Such certificate shall also set forth the proceedings by virtue of which the amended articles were adopted, which proceedings must be in accordance with the provisions of this section above set forth.

[Amended articles filed.] The copy of amended articles of incorporation, thus certified, shall be filed in the office of the county clerk of the county in which the original articles of incorporation of such corporation were filed, and a copy thereof, certified by such county clerk, shall be filed in the office of the secretary of state, whereupon such corporation shall have the same powers, and the stockholders thereof shall thereafter be subject to the same liabilities, as if such amendment had been embraced in the original articles of incorporation. A copy of such copy, certified by the secretary of state, shall be filed in the office of the county clerk of every county in which such corporation has or holds real property, except only the county in which the original articles of incorporation were filed. Any corporation which shall amend its articles of incorporation and shall fail to file copies of its amended articles, as required by the preceding sentence, shall be subject to the penalties and liabilities provided in section two hundred and ninety-nine for a failure of corporations to file copies of their articles of incorporation

in the office of the county clerks of the counties in which they shall purchase, hold, or locate property.

[Changes not permitted.] Nothing contained in this section must be construed to cure or amend any defect existing in the original articles of incorporation, where such defect is of such character as to render such original articles invalid. And it is hereby expressly provided that no corporation shall amend its articles of incorporation to alter the statements which appear in the original articles, of the names and residences of the first directors or the statements which appear in such originals, of the amount of capital stock subscribed and by whom. Nothing appearing herein shall be construed as permitting a corporation to change its name or its principal place of business, extend or reduce its term of existence, or increase or diminish its number of directors or its capital stock, by amending its articles of incorporation.

History: Enacted March 21, 1872; amended March 12, 1885, Stats. and Amdts. 1885, p. 91; March 11, 1893, Stats. and Amdts. 1893, p. 131; amended by Code Commission Act March 16, 1901, Stats. and Amdts. 1900-1, p. 351, Act held unconstitutional, see History, § 4 C. C.; amended March 25, 1903, Stats. and Amdts. 1903, p. 411; March 22, 1905, Stats. and Amdts. 1905, p. 775; June 11, 1915, Stats. and Amdts. 1915, p. 1457. **In effect** August 10, 1915.

§ 363. CORPORATIONS TO OWN THEIR OWN LOTS AND BUILDINGS [repealed].

History: Enacted March 5, 1889, Stats. and Amdts. 1889, p. 67. At the same session another section numbered § 363 was enacted by the same legislature on March 19 (Stats. and Amdts. 1889, p. 332). The Act of March 5 was repealed by Code Commission, Act of March 16, 1901, Stats. and Amdts. 1900-1, p. 352, held unconstitutional, see history, § 4 ante, and the act was re-repealed March 22, 1905, Stats. and Amdts. 1905, p. 776.

§ 363 [a]. CORRECTION OF ERRONEOUS FILING OF INCORPORATION. PETITION, NATURE OF. ACTION OF COURT.

When articles of incorporation have

been prepared, subscribed, and executed in accordance with the provisions of sections two hundred and ninety and two hundred and ninety-two of the civil code, and such original articles filed by error or inadvertence with the clerk of a county other than that named in the articles of incorporation as the county in which the principal place of business is to be transacted, and the secretary of state shall have issued a certificate of incorporation based on a certified copy of such original articles of incorporation, any stockholder or director of such corporation may petition the superior court of the county in which said original articles of incorporation were filed for an order to withdraw such original articles of incorporation, and file in place thereof a certified copy of the copy thereof on file in the office of the secretary of state. Such petition must be verified, and must state clearly the facts, showing that such articles of incorporation were filed by inadvertence and mistake; and notice of the hearing of said petition must be given for at least ten days before the day of hearing, by publication in a newspaper published in the county where such petition is filed.

[Hearing and proceedings on order.] Upon the day set for hearing the petition the superior court may grant an order allowing such original articles of incorporation to be withdrawn, and a certified copy of the copy in the office of the secretary of state in the place thereof filed; and the original articles of incorporation must be filed within ten days thereafter in the county in which the principal place of [where] business is to be transacted, as stated in such articles of incorporation, and a certified copy of the order allowing such action must be filed with the certified copy in the office of the secretary of state, after which said corporation shall be entitled to all rights and privileges of a private corporation, and the title to any property it may have previously acquired shall not be affected by reason of the failure to file the original articles of incorporation in the first instance.

History: Enacted March 19, 1889, Stats. and Amdts. 1889, p. 332. **In force** March 19, 1889.

§ 364. **CORPORATIONS MAY TRANSFER FOREIGN CONCESSIONS.** Any corporation of this state owning grants, concessions, franchises, and properties, or any thereof, in any foreign country, may sell and convey the same to the government of such foreign country, or to any person or persons, or any corporation or corporations, or association or associations, created by or existing under the laws of this or any other state or the United States, or any foreign government; provided, however, that the powers hereby granted shall only be exercised by a majority of the entire board of directors of such corporation of this state, with the concurrence in writing of the holders of two-thirds in amount of the capital stock thereof.

History: Became law, under unconstitutional provision, without governor's approval, March 13, 1899.

§ 365. **RESTORATION OF LOST RECORDS, CERTIFICATES OF STOCK, ETC.** Whenever it shall appear that the minutes, records, seal, assessment book, stock journal, stock ledger, certificate book, certificate of stock or bonds or other papers or records of any corporation, municipal, quasi or otherwise, in this state, shall have been or shall hereafter be lost or destroyed by conflagration or other public calamity, such corporation, by a vote of its board of directors, or any stockholder or bondholder of such corporation, may petition the superior court of the county, or city and county, in which the principal place of business of such corporation is located, to restore such lost, destroyed, or injured minutes, records, seal, assessment book, stock journal, stock ledger, certificate book, certificate of stock or bonds or other papers or records. Such petition shall state the loss, destruction or injury to any such records or documents or certificates of stock or bonds, or other papers or records, or any part or portion thereof, giving the cause of such loss, injury or destruction.

[Petition filed with court.] On the filing of such petition, duly verified, said superior court shall make an order, fixing a time and place for the hearing of the same, and directing the clerk of the court to give notice of such a hearing by publication of a notice stating the time and place of the hearing of said petition and the purpose thereof, which time shall not be less than twenty-five nor more than thirty days from the completion of such publication.

[Publication of notice of hearing.] Notice of such hearing shall be given by publication in some newspaper of general circulation, printed and published in such county, or city and county, where the principal place of business of said corporation is located, and if there be no such newspaper published in said county, or city and county, then in some adjoining county, to be designated by the court or judge thereof, which publication shall be daily (except Sundays) for a period of at least three successive weeks. In case there is no daily newspaper published in either of said counties then such notice shall be published once a week for three successive weeks in a weekly newspaper published in such county.

[Service of notice.] A copy of said notice shall also be personally served upon all persons affected thereby residing in the state of California, whose place of residence or place of business is known to the corporation or any of its officers, if such person can be found within the state, which service may be made at any time during said period of publication. If the place of business or place of residence of any persons affected by said petition or proceeding is unknown to the corporation or any of its officers, within forty-eight hours after the filing of said petition, a copy of said notice shall be mailed to each of the persons affected by said petition or proceeding whose place of residence or place of business is unknown to said corporation or any of its officers, addressed to them, postage prepaid, at the county seat of the county, or county and city, where the place of business of said cor-

poration is located. In addition to the notice by publication, the petitioner shall address a copy of said notice to each of the stockholders of said corporation, and also to each of the persons affected by said petition, whose names and places of residence or business are known to the corporation or any of its officers, at his place of business or residence, postage prepaid, which notice shall be mailed to such stockholders or persons within forty-eight hours after the filing of said petition.

[Proof required of publication and service of notice.] The court before proceeding to hear the case, shall require proof to be made that notice has been published and given as hereinbefore required and service of such notice personally if the same has been so served and if the same has not been so served, an affidavit of the petitioner stating the reasons why such personal service has not been made, shall also be then filed.

[Jurisdiction of court—Judgment and decree.] Upon the completion of said publication, said court shall have jurisdiction to inquire into and determine the loss, injury or destruction of such minutes, records, seal, assessment book, stock journal, stock ledger, certificate book, certificates of stock or bonds, or other papers and documents, and to fix and determine by its judgment or decree, the ownership of said certificates of stock or bonds and the persons entitled thereto, and to direct such corporation to restore its records, seal, assessment book, stock journal, stock ledger, certificate book, certificates of stock or bonds or any other paper or record so lost, injured or destroyed, and to issue new bonds or certificates of stock or other paper or document to any person or persons to whom the same may belong or who may be entitled thereto, as determined by the judgment of the court.

[Unknown owners—Sale of stock for delinquent assessments.] Any stock, bond or other paper, the ownership of which cannot be determined, shall be found by the court, by its judgment, to belong to unknown owners, and in all

proceedings of such corporation, including proceedings for assessment of stock, and the collection of such assessment, and the payment of dividends, and notice of sale and sale for delinquent assessments, said stock or dividends shall be so designated as belonging to unknown owners, without giving the name of the owner thereof or the number of the certificate or series or issue.

History: Enacted June 18, 1906; Stats. and Amdts. 1906, pp. 84-86,Kerr's Stats. and Amdts. 1906-7, pp. 408, 409. **In effect** immediately.

ARTICLE II.

RECORDS.

§ 377. Records—Of what, and how kept. [Record must embrace what.]
§ 378. Other records to be kept by corporations for profit, and others.

§ 377. RECORDS—OF WHAT, AND HOW KEPT. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given.

The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full—all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

History: Enacted March 21, 1872.

§ 378. OTHER RECORDS TO BE KEPT BY CORPORATIONS FOR PROFIT, AND OTHERS. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid;

assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe.

Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

History: Enacted March 21, 1872.

ARTICLE III.

EXAMINATION OF CORPORATIONS, ETC.

[This article was taken from the Statutes of 1850, §§ 29, 30, p. 350.]

§ 382. Examination into affairs of corporation, how made by officers of state.
§ 383. Examination made by legislature.
§ 384. Chapter and article may be repealed.

§ 382. EXAMINATION INTO AFFAIRS OF CORPORATION, HOW MADE BY OFFICERS OF STATE. The attorney-general or district attorney, whenever and as often as required by the governor, must examine into the affairs and condition of any corporation in this state, and report such examination, in writing, together with a detailed statement of facts, to the governor, who must lay the same before the legislature; and for that purpose the attorney-general or district attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the books, papers, and documents belonging to such corporation, or appertaining to its affairs and condition.

History: Enacted March 21, 1872.

§ 383. EXAMINATION MADE BY THE LEGISLATURE. The legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times; and, for that purpose, any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and

may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe.

History: Enacted March 21, 1872.

§ 384. **CHAPTER AND ARTICLE MAY BE REPEALED** (repealed). Section three hundred and eighty-four of the Civil Code is hereby repealed; provided, however, that this shall not be deemed to repeal or otherwise affect section four hundred and four of said code; and provided further that no rights acquired under the provisions of said section three hundred and eighty-four shall be affected hereby, but the same shall be continued in force under the provisions of said section four hundred and four.

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 352, held unconstitutional; see history, § 69 ante; repealed March 18, 1907, Stats. and Amdts. 1907, p. 578, Kerr's Stats. and Amdts. 1906-7, p. 410.

ARTICLE IV.

JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY

§ 388. Franchise sold under execution.
§ 389. Purchaser to transact business of corporation.
§ 390. Purchaser may recover penalties, etc.
§ 391. Liabilities same as before sale.
§ 392. Redemption.
§ 393. Sale, when made.

§ 388. FRANCHISE SOLD UNDER EXECUTION. For the satisfaction of any judgment against any person, company, or corporation having any franchise other than the franchise of being a corporation, such franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner, and with the same effect, as any other property.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 208; Feb. 23, 1897, Stats. and Amdts. 1897, p. 16; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 352, held unconstitutional, see history, § 4 ante; amendment re-enacted March 20, 1905, Stats. and Amdts. 1905, p. 409.

§ 389. PURCHASER TO TRANSACT BUSINESS OF CORPORATION. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same, as hereinafter provided.

History: Enacted March 21, 1872.

§ 390. PURCHASER MAY RECOVER PENALTIES, ETC. The purchaser or his assignee is entitled to recover any

penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

History: Enacted March 21, 1872.

§ 391. **LIABILITIES SAME AS BEFORE SALE.** The person, company, or corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 352, held unconstitutional, see history, § 4 ante; amendment re-enacted March 20, 1905, Stats. and Amdts. 1905, p. 409.

§ 392. **REDEMPTION.** Redemption from any such sale may be had as provided in the Code of Civil Procedure in the case of redemptions from sales of real estate on execution.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 352, held unconstitutioal, see history, § 4 ante; amendment re-enacted March 20, 1905, Stats. and Amdts. 1905, p. 409.

§ 393. **SALE, WHERE MADE.** The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, is situated.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 209; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 352, held unconstitutional, see history, § 4 ante; amendment re-enacted March 20, 1905, Stats. and Amdts. 1905, p. 409.

CHAPTER IV.

EXTENSION AND DISSOLUTION OF CORPORATIONS.

§ 399. Proceedings on disincorporation [repealed].
§ 400. Corporations, directors trustees of creditors, when dissolved, except.
§ 401. Extension of corporate existence, how made. Certificate and certified copy, filing of.
§ 402. How corporations may continue their existence [repealed].
§ 403. Title I to apply to all corporations, with certain exceptions [repealed].

§ 399. PROCEEDINGS ON DISINCORPORATION [repealed].

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 352, held unconstitutional, see history, § 4 ante; repeal re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 563.

§ 400. CORPORATIONS, DIRECTORS TRUSTEES OF CREDITORS, WHEN DISSOLVED, EXCEPT. Unless other persons are appointed by the court, the directors or managers of the affairs of a corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 352, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 563.

§ 401. EXTENSION OF CORPORATE EXISTENCE, HOW MADE. [CERTIFICATE AND CERTIFIED COPY, FILING OF.] Every corporation heretofore or hereafter formed, and existing under the laws of this state, may,

at any time prior to the expiration of the term of its corporate existence extend such terms to a period not exceeding fifty years from the date of such extension. Such extension may be made at any meeting of the stockholders, or members, called by the directors especially for considering the subject, if voted for by stockholders representing two-thirds of the capital stock; or by two-thirds of the members where there is no capital stock; or may be made upon the written assent of two-thirds of the members or of stockholders representing two-thirds of the capital stock.

[Certificate filed with county clerk and secretary of state.] A certificate of such vote or assent shall be signed and sworn to by the president and secretary and by a majority of the directors of the corporation, and filed in the office of the county clerk where the original articles of incorporation were filed, and a copy certified by such clerk shall be filed in the office of the secretary of state, and thereupon the term of existence of the corporation shall be extended for the period specified in such certificate. The fees for certifying such certificate and filing the same and the certified copy thereof, shall be the same as those prescribed by law for certifying and filing articles of incorporation in such cases.

[Franchises.] In no event shall such extension be construed to prolong or extend the duration of any franchise or privilege heretofore granted to any corporation or joint stock company by special legislative act, or by the municipal authorities of any county, city, city and county, town, or other political subdivision of this state, beyond the term fixed by the provisions of the act, ordinance or resolution conferring such privilege or franchise, or beyond the term fixed for the maximum period of existence of such corporation or joint stock company by laws in force and governing the formation and organization thereof at the time such corporation or joint stock company was formed or organized.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 209; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 353, held unconstitutional, see

history, § 69 ante; amendments re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 564; amended March 18, 1907, Stats. and Amdts. 1907, p. 344, Kerr's Stats. and Amdts. 1906-7, p. 410. **In effect** immediately.

§ 402. HOW CORPORATIONS MAY CONTINUE THEIR EXISTENCE [repealed].

History: .Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 209.

§ 403. TITLE I TO APPLY TO ALL CORPORATIONS, WITH CERTAIN EXCEPTIONS [repealed].

History: Enacted March 21, 1872; repealed March 20, 1905, Stats. and Amdts. 1905, p. 410.

CHAPTER V.

GENERAL PROVISIONS AFFECTING CORPORATIONS.

§ 403[a]. Title one to apply to all corporations, with certain exceptions.
§ 404. Legislature may amend, etc., corporation laws and dissolve corporations.

§ 403[a]. GENERAL PROVISIONS APPLY, WHEN—SPECIAL PROVISIONS APPLY, WHEN. The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provison prevails.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 410.

§ 404. LEGISLATURE MAY AMEND, ETC., CORPORATION LAWS AND DISSOLVE CORPORATIONS. The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 353, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 410

CHAPTER VI.

FOREIGN CORPORATIONS.

[This chapter is a codification, Act April 3, 1880 (Stats. 1880, p. 21), and Act March 17, 1899 (Stats. and Amdts. 1899, p. 111), amending Act April 1, 1872, Stats. 1871-2, p. 826. See Pierce vs. Southern Pac. Co., 120 Cal. 156, 47 Pac. Rep. 874, 52 Id. 302, 40 L. R. A. 350.]

§ 405. Designation of person on whom process may be served. Service on the secretary of state, valid, when.
§ 406. Foreign corporations, statute of limitations in favor of. Proof of corporate existence. Change of designation.
§ 407. Foreign railway corporations, rights of in this state.
§ 408. Foreign corporations to file certified copies of articles of incorporation [in office of Secretary of State].
§ 409. Foreign corporations, fees to be paid by, on filing certified copies of articles of incorporation.
§ 410. Foreign corporation, penalty for failure to file certified copies of articles of incorporation.

§ 405. DESIGNATION OF PERSON ON WHOM PROCESS MAY BE SERVED. SERVICE ON SECRETARY OF STATE VALID, WHEN. Every corporation other than those created by or under the laws of this state must, at the time of filing the certified copy of its articles of incorporation, file in the office of the secretary of state a designation of some person residing within the state upon whom process issued by authority of or under any law of this state may be served. A copy of such designation, duly certified by the secretary of state, is sufficient evidence of such appointment. Such process may be served on the person so designated, or, in the event that no such person is designated, then on the secretary of state, and the service is a valid service on such corporation.

History: Added by Code Commission, Act March 21, 1901, Stats. and Amdts. 1900-1, p. 353, held unconstitutional; see history, § 69 ante; re-enacted March 21, 1905, Stats. and Amdts.

1905, p. 630. A codification of § 1 Act March 17, 1899; see introductory note to this chapter; amended March 18, 1907, Stats. and Amdts. 1907, p. 558, Kerr's Stats. and Amdts. 1906-7, p. 410.

§ 406. FOREIGN CORPORATION, STATUTE OF LIMITATIONS IN FAVOR OF. PROOF OF CORPORATE EXISTENCE. CHANGE OF DESIGNATION. Every corporation which complies with the provisions of this chapter is thereafter entitled to the benefit of the laws of this state limiting the time for the commencement of civil actions, but no corporation not created by or under the laws of this state is entitled to the benefit thereof, nor can any such corporation maintain or defend any action or proceeding in any court of this state until the corporation has complied with the provisions of the preceding section.

[Proof of foreign corporation.] In any action or proceeding instituted against any body styled as a corporation, but not created by nor under the laws of this state, evidence that such body has acted as a corporation, or employed methods usually employed by corporations, must be received by the court for the purpose of proving the existence of such corporation, the sufficiency of such evidence to be determined by the court with like effect as in other cases.

[Designation for service—Revocation, etc.—New designation.] Every corporation which has complied with the laws then in force, requiring it to make and file a designation of the person upon whom process against it may be served, need not make or file any further designation. Any designation heretofore or hereafter made may be revoked by the filing by the corporation with the secretary of state of a writing stating such revocation. Within forty days after the death or removal from the state of any person designated by the corporation, or after the revocation of the designation, the corporation must make a new designation, or be subject to the provisions and penalties of this chapter.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 353, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 630; see introductory note to this chapter.

§ 407. **FOREIGN RAILROADS, RIGHTS IN THIS STATE.** Every railway or other corporation organized for the purpose of carrying freight or passengers under or by virtue of the laws of the United States, or of any state or territory thereof, may build railroads, exercise the right of eminent domain, and transact any other business which it might do if it were created and organized under or by virtue of the laws of this state, and has the same rights, privileges, and immunities, and is subject to the same laws, penalties, obligations, and burdens as if created or organized under and by virtue of the laws of this state. Nothing contained in this section shall be construed to exempt any corporation from any duty or liability imposed upon it by any of the provisions of this chapter.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 354, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 631; see the introductory note to this chapter.

§ 408. **FOREIGN CORPORATION MUST FILE CERTIFIED COPY OF ARTICLES OF INCORPORATION [IN OFFICE OF SECRETARY OF STATE].** Every corporation organized under the laws of another state, territory, or of a foreign country, which is now doing business in this state, or is maintaining an office herein, or which shall hereafter do business in this state, or maintain an office herein, or which shall enter this state for the purpose of doing business herein, must file in the office of the secretary of state of the state of California a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, in cases where it has been created by

charter, or statute, or legislative, or executive, or governmental act, duly certified by the secretary of state, or other officer authorized by the law of the jurisdiction under which such corporation is formed to certify such copy, and a certified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business is located, and also where such corporation owns property.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 631; amended March 18, 1907, Stats. and Amdts. 1907, p. 559, Kerr's Stats. and Amdts. 1906-7, p. 411.

§ 409. FOREIGN CORPORATIONS, FEES TO BE PAID BY, ON FILING CERTIFIED COPIES OF ARTICLES OF INCORPORATION. For filing and issuing a certified copy as required in section four hundred and eight of this code, corporations formed under the laws of another state, or of a territory, or of a foreign country, must pay the same fees as are paid by corporations formed under the laws of this state.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 631; see introductory note to this chapter.

§ 410. FOREIGN CORPORATION. PENALTY FOR FAILURE TO FILE COPIES OF ARTICLES OF INCORPORATION. Every corporation organized under the laws of another state, or territory, or of a foreign country, which shall neglect or fail, within ninety days from the taking effect of this section, to comply with the conditions of sections four hundred and eight and four hundred and nine of this code, shall be subject to a fine of not less than five hundred dollars, to be recovered in any court of competent jurisdiction;

[Proceedings to recover fine.] And it is hereby made the duty of the secretary of state, as he may be advised that corporations are doing business in contravention of sections

four hundred and eight and four hundred and nine of this code, to report the fact to the governor, who shall instruct (1) the district attorney of the county wherein such corporation has its principal place of business, or (2) the attorney general of the state, or both, as soon as practicable, to institute proceedings to recover the fine provided for in this section, and the amount so recovered must be paid into the state treasury to the credit of the general fund of the state;

[Corporations failing to comply may not maintain suits.] In addition to which penalty, no foreign corporation which shall fail to comply with sections four hundred and eight and four hundred and nine of this code can maintain any suit or action in any of the courts of this state, or acquire or convey any legal title to any real property within this state, until it has complied with said sections;

[Corporations exempted.] Provided, that any such corporation which, prior to the eighth day of March, nineteen hundred and one, shall have complied with the provisions of the act entitled "An act to amend 'An act in relation to foreign corporations,' approved April first, eighteen hundred and seventy-two," approved March seventeenth, eighteen hundred and ninety-nine, is exempted from the provisions of this section and the two sections next preceding.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 631; amended April 26, 1911, Stats. and Amdts. 1911, p. 1113.

TITLE II.

INSURANCE CORPORATIONS

Chapter I. General Provisions, §§ 414-422.
II. Fire and Marine Insurance Corporations, §§ 424-432.
III. Mutual Life, Health, and Accident Insurance Corporations, §§ 437-452.
IV. Mutual Benefit and Life Associations, §§ 452a-453.
V. Corporations to Discover Fire and Save Property and Human Life from Destruction Thereby, §§ 453a-453c.
VI. Life, Health, Accident, and Annuity or Endowment Insurance on the Assessment Plan, §§ 453d-453p.
VII. Title Insurance Corporations, §§ 453s-453z.
VIII. Mortgage Insurance, §§453a-453hh.

CHAPTER I.

GENERAL PROVISIONS.

§ 414. Subscription to capital stock opened, and how collected.
§ 415. Purchase and conveyance of real estate. [What property may be held; what must be sold within five years.]
§ 416. Policies, how issued and by whom signed.
§ 417. Dividends, of what and when declared.
§ 418. Directors liable for loss on insurance in certain cases.
§ 419. Certain companies to have capital stock of two hundred thousand dollars [repealed].
§ 420. Certain companies to have capital stock of one hundred thousand dollars [repealed].
§ 421. Investment of capital and accumulations. Reports to officers.
§ 422. Report on stocks and bonds held by insurance companies.

§ 414. SUBSCRIPTIONS TO CAPITAL STOCK OPENED, AND HOW COLLECTED. After the secretary of state issues the certificate of incorporation, as provided in article one, chapter one, title one, of this part, the directors named in the articles of incorporation must proceed in the manner specified, or in their by-laws, or if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; to levy assessments and instalments thereon, and to collect the same, as in chapter two of title one provided.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 354, held unconstitutional, see history, § 4 ante.

§ 415. PURCHASE AND CONVEYANCE OF REAL ESTATE. [WHAT PROPERTY MAY BE HELD; WHAT MUST BE SOLD WITHIN FIVE YEARS.] No insurance corporation may purchase, hold or convey real estate, except as hereinafter set forth, to wit:

1. The building in which it has its principal office and the land upon which it stands.

2. Also, such as may be requisite for its accommodation in the convenient transaction of its business.

3. Also, such as may be conveyed to it, or to any person for it, by way of mortgage, or in trust or otherwise, to secure or provide for the payment of loans previously contracted or for moneys due.

4. Also such as may be purchased at sales upon deeds of trust, or judgments obtained or made for such loans or debts.

5. Also such as may be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

All such real estate, mentioned in subdivisions three, four and five, so acquired, which is not requisite for the accomo-

dation of such corporation in the transaction of its business, must be sold and disposed of within five years after such corporation acquired title to the same.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 354, held unconstitutional, see history, § 4 ante; amendment re-enacted Feb. 24, 1905, Stats. and Amdts. 1905, p. 21.

§ 416. **POLICIES, HOW ISSUED AND BY WHOM SIGNED.** All policies made by insurance corporations must be subscribed by the president or vice president, or in case of the death, absence, or disability of those officers, by any two of the directors, and countersigned by the secretary of the corporation. All such policies are as binding and obligatory upon the corporation as if executed over the corporate seal.

History: Enacted March 21, 1872.

§ 417. **DIVIDENDS, OF WHAT AND WHEN DECLARED.** The directors of every insurance corporation, at such times as their by-laws provide, must make, declare, and pay to the stockholders dividends of so much of the net profits of the corporate business and interest on capital invested as to them appears advisable; but the moneys received and notes taken for premium on risks which are undetermined and outstanding at the time of making the dividend must not be treated as profits, nor divided, except as provided in chapter two of this title.

History: Enacted March 21, 1872, founded upon § 21 Act April 2, 1866, Stats. 1865-6, p. 748; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 355, held unconstitutional, see history, § 4 ante.

§ 418. **DIRECTORS LIABLE FOR LOSS ON INSURANCE IN CERTAIN CASES.** If any insurance corporation is under liabilities for losses to an amount equal to its

capital stock, and the president or directors, after knowing the same, make any new or further insurance, the estates of all who make such insurance, or assent thereto, are severally and jointly liable for the amount of any loss which takes place under such insurance.

History: Enacted March 21, 1872, founded upon Act April 2, 1866, Stats. 1865-6, p. 747; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 355, held unconstitutional, see history, § 4 ante.

§ 419. CERTAIN INSURANCE COMPANIES TO HAVE A CAPITAL STOCK OF TWO HUNDRED THOUSAND DOLLARS [repealed].

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 269; April 1, 1878, Code Amdts. 1877-8, p. 80; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 355, held unconstitutional, see history, § 69 ante; repealed March 8, 1907, Stats. and Amdts. 1907, p. 141, Kerr's Stats. and Amdts. 1906-7, p. 411. **In effect** immediately.

Incorporated in Article XVI. of Ch. III, Part III, Title I, of the Political Code. See Pol. C. § 594.

§ 420. CERTAIN INSURANCE COMPANIES TO HAVE A CAPITAL STOCK OF ONE HUNDRED THOUSAND DOLLARS [repealed].

History: Enacted April 1, 1878, Code Amdts. 1877-8, p. 80; repealed March 8, 1907, Stats. and Amdts. 1907, p. 141, Kerr's Stats. and Amdts. 1906-7, p. 411. **In effect** immediately.

Incorporated in Pol. C. as noted under last section.

§ 421. INVESTMENT OF CAPITAL AND ACCUMULATIONS OF CERTAIN CORPORATIONS. REPORTS OF OFFICERS.

Corporations organized under the laws of this state for the transaction of any kind of insurance business authorized by such laws may invest their capital, surplus and accumulations in the purchase of, or loans upon any of the securities specified in subdivisions one to five inclusive of this section.

1. **[United States bonds.]** Bonds or interest-bearing notes or obligations of the United States or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

2. **Bonds of this state** or those for which the faith and credit of the State of California are pledged for the payment of principal and interest and bonds of any other state in the United States that has not, within five years next preceding such investment by such insurance company, defaulted in payment of any part of either principal or interest due upon any legally authorized bond issue.

3. **[County, etc., bonds.]** Bonds or interest-bearing notes or obligations issued under authority of law by any county, municipality or school district in this state or in any other state or territory of the United States; provided, that said county, municipality or school district or the state or territory in which it is located has not, within two years next preceding such investment by such insurance company, defaulted in payment of any part of either principal or interest due upon any legally authorized bond issue.

4. **[Road division, etc., bonds.]** Bonds of any permanent road division in this state, and any irrigation district bonds which the law may now or hereafter authorize as legal investments for insurance companies; provided, that the total amount of bonds issued by any such irrigation district does not exceed sixty per centum of the aggregate market value of the lands within such district, and of the water, water rights, canals, reservoirs, reservoir sites and irrigation works owned or to be acquired or constructed with the proceeds of any such bonds, by such district, such facts in reference to bonds of irrigation districts to be determined by a commission now or hereafter authorized by law to ascertain and report upon such facts.

5. **[First mortgage notes.]** (a) Notes or bonds secured by first mortgage or deed of trust or other first lien upon real estate, improved or unimproved; provided, that the prin-

cipal so loaned or the entire note or bond issue so secured shall not exceed sixty per centum of the market value of such real estate, or of such real estate with improvements taken as security at the date of investment; provided, also, in case said loan is made, or said note or bond issue created for a building loan on real estate, that at no time shall the principal so loaned or the entire outstanding note or bond issue exceed sixty per centum of the market value of the real estate and the actual cost of the improvements thereon taken as security; or

[Notes guaranteed by policy of mortgage insurance.] (b) Notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance, and mortgage participation certificates, issued by a mortgage insurance company in accordance with the provisions of chapter VIII of title II of part IV of division first of the Civil Code; provided, that no insurance corporation shall make any investment in any of the securities specified in subdivisions one, two, three, four and five of this section in an amount exceeding the market value of such security, at the date of such investment.

6. **[Investment of balance of capital.]** Corporations organized for and engaged in the business of fire, life or marine insurance, may, after the investment of two hundred thousand dollars, and corporations organized for and engaged in the business of transacting any other kind of insurance authorized by law, except mortgage insurance, may also, after the investment of one hundred thousand dollars in any of the securities specified in subdivisions one, two, three, four and five of this section, invest the balance of their capital, surplus and any accumulations in the purchase of or loans upon the stock of any corporation (except a mining corporation) organized and carrying on business under the laws of this state, or the laws of the United States, which stocks have, at the date of such investment, a market value of not less than their paid-in value, or in the purchase of,

or loans upon, interest-bearing bonds issued by a corporation organized under the laws of any state or territory in the United States, which corporation has not, within five years next preceding the date of such investment, defaulted in payment of any part of either principal or interest of any bond of the issue of which the bonds which comprise such investment form a part, and which stocks or bonds must, in each case, be rated as first class securities; provided, that any investment made, under the provisions of this subdivision of this section shall be approved by vote of two-thirds of all the directors of the investing corporation. Such approval shall be entered upon the records or minutes of such corporation. Such entry must show the fact of making such investment, the amount thereof, the name of each director voting to approve the same, the amount, character and value of the security purchased or taken as collateral, and if the investment be a loan, the name of the borrower, the rate of interest thereon, and the date when the loan will become due or payable. It shall be the duty of the secretary of any such investing corporation to report in writing during the months of January and July of each year to the insurance commissioner, the data above set forth respecting each such investment, and the insurance commissioner may, if any such investment is not approved by him, require the corporation to sell or dispose of the same.

7. [Policy loans.] Life insurance companies may also loan upon their own policies; provided, that the amount so loaned upon each policy shall not exceed the reserve against said policy at the time said loan is made; provided, further, that no policy loans whatever shall ever be used as security which may be deposited with the insurance commissioner under section six hundred thirty-four of the Political Code; and provided, further, that whenever any such loan in any amount is made on a policy registered with the insurance commissioner under said section six hundred thirty-four of the Political Code, such registration shall be forthwith canceled.

History: Added by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 355, held unconstitutional, see history § 4 C. C.; re-enacted March 3, 1905, Stats. and Amdts. 1905, p. 34, also re-enacted March 21, 1905 with slight variations which latter enactment is given in Kerr's Cyc. Codes, Pocket Codes of 1909 and Cumulative Supplement 1906-1913 as § 421[a]; repeal enacted March 18, 1907, Stats. and Amdts. 1907, p. 597, Kerr's Stats. and Amdts. 1906-7, p. 411; the re-enactment approved March 21, 1905, and retained as number § 421[a] as above indicated was amended by Act of June 6, 1913, and numbered § 421, Stats. and Amdts. 1913, p. 488; June 12, 1915, Stats. and Amdts. 1915, p. 1532. **In effect** August 11, 1915.

§ 422. **REPORT ON STOCKS AND BONDS HELD BY INSURANCE COMPANIES.** If any domestic insurance corporation shall have invested any of its funds in or loaned any of its funds upon the stock, bonds or other evidences of debt of other corporations or of any nation, state, county, city, village, school district, municipality, or other civil division of any state, pursuant to the laws of this state, and the insurance commission shall have reason to believe that such stock, bonds or other evidences of debt are not amply secured or are not yielding an income, he may direct it to report to him under oath the amount thereof, the security therefor and its market value. No stock and no bond or other evidence of debt if in default as to principal or interest, or if not amply secured, shall be valued as an asset of the corporation above its market value.

[How valued.] All bonds or other evidences of debt held by any insurance corporation authorized to do business in this state, if amply secured and if not in default as to principal or interest, may in the discretion of the insurance commissioner, be valued as follows: If purchased at par at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield the effective rate of interest at which the purchase was made; provided, that the purchase price shall in no case be taken at a higher figure than

the actual market value at the time of purchase; and provided, further, that the insurance commissioner shall have full discretion in determining the method of calculating values according to the foregoing rule, and the values found by him in accordance with such method shall be final and binding; provided, also, that any such corporation may return such bonds or other evidence of debt at their market value or their book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to the foregoing rule.

History: Enacted June 6, 1913, Stats and Amdts. 1913, p. 464. **In effect** August 10, 1913.

CHAPTER II.

[The title and section headings of chapter II of title II, of part IV, of division first, of the Civil Code are hereby changed to read as follows (See Stats. and Amdts. 1913, p. 487):]

FIRE AND MARINE INSURANCE CORPORATIONS

§ 424. Payment of subscriptions. Capital to be all paid in twelve months.
§ 425. Certificate of capital stock paid up to be filed, and when.
§ 426. Property which may be insured.
[§ 427. Funds may be invested, how. Repealed.]
§ 428. Limit of one risk.
§ 429. Amounts to be reserved before making dividends.
§ 430. Reservations by companies with less than two hundred thousand dollars capital.
[§ 431. Amount to be reserved by life insurance companies. Repealed.]
§ 432. Accumulate surplus fund [repealed].

§ 424. PAYMENT OF SUBSCRIPTIONS. CAPITAL TO BE ALL PAID IN TWELVE MONTHS. The entire capital stock of every fire or marine insurance corporation must be paid up in cash within twelve months from the filing of the articles of incorporation, and no policy of insurance must be issued or risk taken until twenty-five per cent of the whole capital stock is paid up.

History: Enacted March 21, 1872.

§ 425. CERTIFICATE OF CAPITAL STOCK PAID UP TO BE FILED, AND WHEN. The president and a majority of the directors must, within thirty days after the payment of the twenty-five per cent of the capital stock, and also within thirty days after the payment of the last instalment or assessment of the capital stock limited and fixed, prepare, subscribe, and swear to a certificate setting

forth the amount of the fixed capital and the amount thereof paid up at the times respectively in this section named, and file the same in the office of the county clerk of the county where the principal place of business of the corporation is located, and a duplicate thereof, similarly executed, with the insurance commissioner.

History: Enacted March 21, 1872.

§ 426. **PROPERTY WHICH MAY BE INSURED.** Every corporation formed for fire or marine insurance, or both, may make insurance on all insurable interests within the scope of its articles of incorporation, and may cause itself to be reinsured.

History: Enacted March 21, 1872.

§ 427. **FUNDS MAY BE INVESTED, HOW** [repealed].

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 210; April 1, 1878, Code Amdts. 1877-8, p. 81; March 5, 1887, Stats. and Amdts. 1887, p. 22; March 6, 1899, Stats. and Amds. 1899, pp. 66-68 (became law, under constitutional provision, without governor's approval); repealed March 3, 1905, Stats. and Amdts. 1905, p. 34; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 628.

§ 428. **LIMIT OF ONE RISK.** Fire and marine insurance corporations must never take, on any one risk, whether it is a marine insurance or an insurance against fire, a sum exceeding one tenth part of their capital actually paid in, and intact at the time of taking such risk, without at once reinsuring the excess above one tenth.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 210; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 357, held unconstitutional, see history, § 4 ante; re-amended March 21, 1905, p. 570.

§ 429. **AMOUNTS TO BE RESERVED BEFORE MAKING DIVIDENDS.** No corporation formed subsequent to April first, eighteen hundred and seventy-eight, under the laws of this state, and transacting fire, marine or inland navigation insurance business, must make any dividends except from profits remaining on hand after retaining unimpaired:

1. The entire subscribed capital stock.

2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks.

3. A fund equal to one-half of the amount of all premiums on all other risks not terminated at the time of making such dividend.

4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes.

History: Enacted March 12, 1872; amended April 1, 1878, Code Amdts. 1877-8, p. 81; March 5, 1887, Stats. and Amdts. 1887, p. 23; June 6, 1913, Stats. and Amdts. 1913, p. 489. **In effect** August 10, 1913.

§ 430. **RESERVATIONS BY COMPANIES WITH LESS THAN TWO HUNDRED THOUSAND DOLLARS CAPITAL.** No fire or marine insurance corporation, with a subscribed capital of less than two hundred thousand dollars, must declare any dividends, except from profits remaining on hand after reserving:

1. A sum necessary to form, with the subscribed capital stock, the aggregate sum of two hundred thousand dollars;

2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks;

3. A fund equal to one-half the amount of all premiums on fire risks and marine time risks not terminated at the time of making such dividend;

4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes.

History: Enacted March 21, 1872.

§ 431. AMOUNT TO BE RESERVED BY LIFE INSURANCE COMPANIES [repealed].

History: Enacted April 1, 1878, Code Amdts. 1877-8, p. 81; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 357, held unconstitutional; see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 571.

§ 432. ACCUMULATE SURPLUS FUND [repealed].

History: Enacted March 5, 1887, Stats. and Amdts. 1887, p. 23; repealed June 6, 1913, Stats. and Amdts. 1913, p. 489. **In effect** August 10, 1913.

CHAPTER III.

MUTUAL LIFE, HEALTH, AND ACCIDENT INSURANCE CORPORATIONS.

§ 437. Capital stock. Guarantee fund.
§ 438. Of what guarantee fund shall consist.
§ 439. What constitutes, and deficiency in fixed capital.
§ 440. Declaration of fixed capital to be filed.
§ 441. Guarantee notes and interest. [Commission and interest allowed.]
§ 442. Insured entitled to vote, when.
§ 443. Number of directors, how altered.
§ 444. Investment of capital stock [repealed].
§ 445. Limitation to the holding of stock, etc., may be provided for in by-laws.
§ 446. Premiums, how payable.
§ 447. Insurance companies to furnish data to insurance commissioner. Employment of actuary [repealed].
§ 448. No stamps required on accident insurance [repealed].
§ 449. [Valuation of policies.] Retaliatory clause [repealed].
§ 450. Policies issued within state. [Provisions of.]
§ 451. Certain orders not insurance companies [repealed].
§ 452. Corporations, life insurance. Dividends, how made.

§ 437. CAPITAL STOCK. GUARANTEE FUND. Every corporation formed for the purpose of mutual insurance on the lives or health of persons, or against accidents to persons for life or any fixed period of time, or to purchase and sell annuities, must have a capital stock of not less than two hundred thousand dollars. It must not make any insurance upon any risk or transact any other business as a corporation until its capital stock is fully paid up in cash, nor until it has also obtained a fund, to be known as a "guarantee fund," of not less than two hundred and fifty thousand dollars, as is hereinafter provided. If more than the requisite amount is subscribed, the stock must be distributed pro rata among the subscribers.

Any subscription may be rejected by the board of directors or the committee thereof, either as to the whole or any part thereof, and must be, so far as rejected, without effect, nothing in this section shall be deemed to contravene any of the provisions of section four hundred and fifty-one.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 357, held unconstitutional, see history, § 4 ante; re-amended March 18, 1905, Stats. and Amdts. 1905, pp. 183-184.

§ 438. OF WHAT GUARANTEE FUND SHALL CONSIST. The guarantee fund mentioned in the preceding section must consist of the promissory notes of solvent parties, approved by the board of directors and by each other, payable to the corporation or its order, and at such times, in such modes, and in such sums, with or without interest, and conformable in all other respects to such requirements as the board of directors prescribe; but the amount of the notes given by any one person must not exceed in the whole the sum of five thousand dollars, exclusive of interest. Such notes must be payable absolutely and at the option of the corporation; they must be negotiable, and may be indorsed and transferred, or converted into cash, or otherwise dealt with by the corporation, at its discretion, without reference to any contingency of losses or expenses. Such notes, or the proceeds thereof, must remain with the corporation as a fund for the better security of its dealers, [persons dealing with it] and constitute the assets of the corporation, liable for all its debts, obligations, and indebtedness next after its assets from premiums and other sources, exclusive of capital stock, until the net earnings, over and above its expenses, losses, and liabilities, shall have accumulated in cash, or securities in which the net earnings have been invested, to a sum which, with the capital stock, is equal to the aggregate of the original amounts of the guarantee fund and of the capital stock.

History: Enacted March 21, 1872, founded upon § 9, Act April 2, 1866, Stats. 1865-66, p. 755.

§ 439. **WHAT CONSTITUTES, AND DEFICIENCY IN FIXED CAPITAL.** The sum accumulated as provided in the preceding section, together with the capital stock, shall become and remain the fixed capital of the corporation, not subject to division among the stockholders or parties dealing with it, or to be expended in any manner otherwise than [as] may be required in payment of the corporation's debts and actual expenses, until the business of the corporation is closed, its debts paid, and its outstanding policies and obligations of every kind canceled or provided for; and if from any cause a deficiency at any time occurs in such fixed capital, no further division of profits must take place until such deficiency has been made up.

History: Enacted March 21, 1872.

§ 440. **DECLARATION OF FIXED CAPITAL TO BE FILED.** Whenever the fixed capital of the corporation is obtained as hereinbefore provided, the president of the corporation and its actuary, or its secretary, if there is no actuary, must make a declaration in writing, sworn to before some notary public, of the amount of such fixed capital, and of the particular kinds of property composing the same, with the nature and amount of each kind, which must be filed with the original articles of incorporation, and a copy, certified by the county clerk, must be published for at least four successive weeks, in a newspaper published in the county where the principal business of the corporation is situated. Upon the filing of such declaration the guarantee fund is discharged of its obligations, and all notes of the fund remaining in the control of the corporation, and not affected by any lien thereon, or claim of that nature, must be surrendered by it to the makers thereof, respectively, or other parties entitled to receive the same.

History: Enacted March 21, 1872.

§ 441. GUARANTEE NOTES AND INTEREST. [COMMISSION AND INTEREST ALLOWED.] Until the guarantee fund is discharged from its obligations, as provided in the preceding section, no note must be withdrawn from the fund, unless another note of equal solvency is substituted therefor, with the approval of the board of directors. The corporation must allow a commission, not exceeding five per cent per annum, on all such guarantee notes while outstanding, and also interest on all moneys paid on such notes by the parties liable thereon, at the rate of twelve per cent per annum, payable half yearly until repaid by the corporation, unless the current rate of interest is different from this amount, in which case the rate payable may, from time to time, at intervals of not less than one year, be increased or reduced by the board of directors, so as to conform to the current rate.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 210.

§ 442. INSURED TO BE ENTITLED TO VOTE, WHEN. After the filing of the declaration of the fixed capital, as in this article provided, the holders of policies of life insurance for the term of life, on which the premiums are not in default, may vote at the election of directors, and have one vote for each one thousand dollars insured by their policies, respectively.

History: Enacted March 21, 1872.

§ 443. NUMBER OF DIRECTORS, HOW ALTERED. The number of directors specified in the articles of incorporation may be altered from time to time during the existence of the corporation by resolution, at the annual meeting of a majority of those entitled to vote at the election of directors, but the number must never be reduced below five.

History: Enacted March 21, 1872.

§ 444. INVESTMENT OF CAPITAL STOCK [repealed].

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 211; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 357, held unconstitutional, see history, § 69 ante; repealed March 22, 1907, Stats. and Amdts. 1907, p. 889, Kerr's Stats. and Amdts. 1906-7, p. 413. **In effect** immediately.

§ 445. LIMITATION TO THE HOLDING OF STOCK, ETC., MAY BE PROVIDED FOR IN BY-LAWS. The corporation may, by its by-laws, limit the number of shares which may be held by any one person, and make such other provisions for the protection of the stockholders and the better security of those dealing with it as to a majority of the stockholders may seem proper, not inconsistent with the provisions of this title or part.

History: Enacted March 21, 1872.

§ 446. PREMIUMS, HOW PAYABLE. All premiums must be payable wholly in cash, or one half or a greater proportion in cash, and the remainder in promissory notes bearing interest, as may be provided for by the by-laws. Agreements and policies of insurance made by the corporation may be upon the basis of full or partial participation in the profits, or without any participation therein, as may be provided by the by-laws and agreed between the parties.

History: Enacted March 21, 1872.

§ 447. INSURANCE COMPANIES TO FURNISH DATA TO INSURANCE COMMISSIONER. EMPLOYMENT OF ACTUARY [repealed].

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 211; Feb. 25, 1889, Stats. and Amdts. 1889, p. 36; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 357, held unconstitutional, see history,

§ 69 ante; repealed March 18, 1907, Stats. and Amdts. 1907, p. 141, Kerr's Stats. and Amdts. 1906-7, p. 413. **In effect** immediately. Incorporated in Political Code as noted under § 419. See Pol. C. § 625.

§ 448. NO STAMPS REQUIRED ON ACCIDENT INSURANCE CONTRACT [repealed].

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 358, held unconstitutional; see history, § 69 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 571; re-repealed March 8, 1907, Stats. and Amdts. 1907, p. 141, Kerr's Stats. and Amdts. 1906-7, p. 413. **In effect** immediately.

§ 449. [VALUATION OF POLICIES.] RETALIATORY CLAUSE [repealed].

History: Enacted March 30, 1874, Code Amdts. 1873-4, p. 271; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 358, held unconstitutional, see history, § 69 ante; repealed March 8, 1907, Stats. and Amdts. 1907, p. 141, Kerr's Stats. and Amdts. 1906-7, p. 413. **In effect** immediately. Incorporated in Political Code as noted under § 419 ante. See Pol. C. § 618.

§ 450. POLICIES ISSUED WITHIN THE STATE. [PROVISIONS OF.] Every contract or policy of life insurance hereinafter made by any person or corporation, with and upon the life of a resident of this state, and delivered within this state, shall provide, in event of default of any premium payment after three full annual premiums shall have been paid on such policy, that without any action on the part of the insured, the net value of such policy based upon the reserve basis used in computing the premiums and values thereunder (the policy to specify the mortality table and rate of interest so adopted) which net value shall be at least equal to its entire net reserve at the date of default, including that of dividend additions, if any, based upon a standard not lower than the American experience tables of mortality

with interest at three and one-half per cent yearly, less a surrender charge of not more than two and one-half per cent of the face amount of the policy and of any existing dividend additions thereto and less any indebtedness to the company on or secured by the policy, shall be applied as a single premium to the purchase of one of the following stipulated forms of insurance:

[**Paid-up non-participating policies.**] 1. Paid-up non-participating term insurance in the amount of the face of the policy, plus dividend additions, if any, for such a period as the net value outlined above will purchase at the net single premium, at the attained age of the insured at the time of the lapse, based upon the reserve basis described in the policy; provided, however, that under endowment contracts the term shall not extend beyond the endowment period named in the original contract, and the excess value, if any, shall be applied as a net single premium to purchase in the same manner paid-up pure endowment insurance, payable at the end of the endowment period named in the contract if the insured be then living, or,

2. Paid-up non-participating term insurance in the amount of the face of the policy, plus dividend additions, if any, and less any outstanding indebtedness, for such a period as the net value outlined above will purchase at the net single premium, at the attained age of the insured, based upon the reserve basis described in the policy; provided, however, that under endowment contracts the term shall not extend beyond the endowment period named in the original contract, and the excess value, if any, shall be applied as a net single premium to purchase in the same manner paid-up pure endowment insurance, payable at the end of the endowment period named in the contract if the insured be then living, or,

3. Paid-up non-participating insurance payable at the time and on the conditions named in the policy for such an amount as the net value outlined above will purchase at the net single premium, at the attained age of the insured, based upon the reserve basis described in the policy.

[Surrender of lapsed policy.] Provided, however, that the policy may be surrendered to the company, at its home office, upon due application by the legal owner thereof, within one month after date of premium default, for a specified cash value which shall be at least equal to the sum which would be otherwise available for the purchase of the automatic form of insurance provided therein; and provided further that the company may defer payment of such cash value for not more than six months after application therefor is made.

No agreement between the company and the policyholder or applicant for insurance contrary to the foregoing shall be held to waive any of the provisions provided above.

Any life insurance policy issued upon the life of a resident of this state, and delivered within this state, which does not contain an automatic non-forfeiture value in conformity with the foregoing shall be construed as granting non-participating term insurance, as provided in paragraph first of this section, and such a benefit shall be read into the contract.

The provisions of this section shall not apply to annuities, industrial policies or to term contracts issued for periods of twenty years or less.

[Repealing clause.] Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

History: Enacted March 30, 1874, Code Amdts. 1873-4, p. 271; amended April 1, 1878, Code Amdts. 1877-8, p. 82; April 26, 1880, Code Amdts. 1880 (C. C. pt.), p. 91; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 358, held unconstitutional; see Kerr's Cyc. C. C. § 4; May 1, 1911, Stats. and Amdts. 1911, p. 1272.

§ 451. CERTAIN ORDERS NOT INSURANCE COMPANIES [repealed].

History: Enacted March 30, 1874, Code Amdts. 1873-4, p. 271; amended April 7, 1878, Code Amdts. 1877-8, p. 82, repealed April

26, 1880, Code Amdts. 1880 (Pol. Code pt.), p. 92; re-enacted March 23, 1885, Stats. and Amdts. 1885, p. 221; repealed March 8, 1907, Stats. and Amdts. 1907, p. 141, Kerr's Stats. and Amdts. 1906-7, p. 413. **In effect** immediately.

§ 452. **CORPORATIONS, LIFE INSURANCE. DIVIDENDS, HOW MADE.** No corporation formed under the laws of this state, and transacting life insurance business, must make any dividends, except from profits remaining on hand after retaining unimpaired:

1. The entire capital stock;

2. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes;

3. A sum sufficient to reinsure all outstanding policies, as ascertained and determined upon the basis of the American experience table of mortality, and interest at the rate of four and one half per cent per annum.

History: New section added by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 359, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 571.

Original section 452, regulating determination of net valuation of policy at expiration of term, was enacted April 1, 1878 (Code Amdts. 1877-8, p. 83), and repealed April 26, 1880, Code Amdts. 1880 (Pol Code pt.), p. 92.

[This chapter was added by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 360, held unconstitutional, see history, § 4 ante; re-enacted March 20, 1905.]

CHAPTER IV.

MUTUAL BENEFIT AND LIFE ASSOCIATIONS.

§ 452a. Formation of the association.
§ 453. Levying of assessments. By-laws which may be made.

§ 452a. FORMATION OF THE BENEFIT ASSOCIATION. Associations of any number of persons may be formed for the purpose of paying the nominee of any member a sum, upon the death of the member, not exceeding three dollars for each member of the association, but not exceeding, in any case, the sum of three thousand dollars. Such association may be formed by filing articles of incorporation in the office of the clerk of the county in which the principal place of business is situated and a certified copy of such articles of incorporation, duly certified by the county clerk, in the office of the secretary of state. Such articles must state the name of the corporation, its general purposes, its principal place of business, its term of existence, not exceeding fifty years and the names and residences of the directors selected or appointed to serve for the first year. The articles of incorporation must be signed by not less than twenty-five members of such association and must be acknowledged by them as required by section two hundred and ninety-two.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 410; amended March 28, 1913, Stats. and Amdts. 1913, p. 12. **In effect** August 10, 1913.

§ 453. LEVYING OF ASSESSMENTS. BY-LAWS WHICH MAY BE MADE. Each association provided for

in this chapter may, on the death of a member, levy an assessment on the surviving members of not exceeding three dollars for each member, and collect and pay the same to the nominee of such decedent, and may also provide for the payment of such annual payments by members as may be deemed just, but no member must be subject to any annual assessment in excess of that established when he joined the association. The association may make such by-laws not inconsistent with the laws of the state as may be necessary for its government and the transaction of its business; may, by its name, sue and be sued;

[Loaning funds and purchasing real estate.] Loan such funds as it may have on hand; and own sufficient real estate for its business purposes and such as it may be necessary to purchase on foreclosure of its mortgages.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, pp. 410-411.

[This chapter was added at recommendation of Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, pp. 360-362, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905. A codification of Act April 1, 1876, Stats. 1875-6, pp. 689-690, as amended by Act March 29, 1897, Stats. and Amdts. 1897, pp. 223-225.]

CHAPTER V.

CORPORATIONS TO DISCOVER FIRE AND SAVE PROPERTY AND HUMAN LIFE FROM DESTRUCTION THEREBY.

§ 453a. Powers of the corporation. [Underwriters.]
§ 453b. Right of way of corporation and its officers when running to fires.
§ 453c. Yearly meeting of corporation, notice to be given thereof, and proceedings which may be authorized thereat. [Who may vote.]

§ 453a. POWERS OF THE CORPORATION. [UNDERWRITERS.] Any corporation of underwriters heretofore organized and now existing, or which may be hereafter organized under the laws of this state, for the purpose of discovering and preventing fires and of saving property and human life from conflagration, and doing business within any municipal corporation of this state, has power, at its own proper cost and expense, to maintain a corps of men, with proper officers, equipped with the necessary machinery and apparatus therefor, whose duty it is, so far as practicable, to discover and prevent fires and save property and human life from conflagration; and for the effective discharge of such duties, authority is hereby granted such corps to enter any building on fire, or in which property is on fire, or which such corps or any officer thereof deems to be immediately exposed to any existing fire, or in danger of taking fire from a burning building, and to remove or otherwise save and

protect from conflagration or damage by water any property, during and immediately after such fire.

[Not to interfere with fire departments.] Nothing in this chapter must be so construed as in any degree to lessen, impair, or interfere with the powers, privileges, duties, or authority of the regular fire department of such municipality; nor can any act of such corps justify any owner of any building or property in abandoning such building or property.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 571-572; see introductory note to this chapter.

453b. **RIGHT OF WAY OF CORPORATION AND ITS OFFICERS WHEN RUNNING TO FIRES.** Such corporation, with its officers and corps, when running to a fire with its horses, vehicles, and salvage apparatus, has the same right of way as is or may be bestowed by any ordinance of the municipality or law of this state upon the regular fire department of the municipality wherein such corporation is acting; but the rights of such fire department must always be paramount to the rights of such corporation.

[Certain laws and ordinances governing fire departments to govern.] All ordinances now existing or which may hereafter be passed by the municipal authorities of any city and county, or of any incorporated city or town wherein such a corporation may carry on business, and all laws of this state applicable to such city and county, or city or town, for the conviction or punishment of any person or persons wilfully or carelessly obstructing the progress of the apparatus of the fire department of such city and county, or city or town, while going to a fire, or of any person or persons wilfully or carelessly injuring any animal or property of said fire department, are equally applicable to any person or persons wilfully or carelessly obstructing the progress of the apparatus of such corporation while going to a fire, and to any

person or persons who wilfully or carelessly injures any animal or property of such corporation; and said laws and ordinances, and their penalties, may be enforced in the same courts and in the same manner, and with equal force and effect, as in the case of the fire department.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 572; see introductory note to this chapter.

§ 453c. **YEARLY MEETINGS OF CORPORATION, NOTICE THEREOF, PROCEEDINGS WHICH MAY BE AUTHORIZED THEREAT. [WHO MAY VOTE].** In the month of July, in every year, there must be held a meeting of all corporations created for the purposes specified in this chapter; of which ten days' previous notice must be inserted in at least one daily newspaper published in the municipality where said corporation is organized or established, at which meeting each insurance company, corporation, association, underwriter, agent, person, or persons doing a fire insurance business in said municipality, whether members of said corporation or not, shall have a right to be represented, and shall be entitled to one vote.

[Power of majority present—Fixing expenses.] A majority of the whole number so represented has power to decide upon the question of sustaining the fire patrol organized by corporations heretofore created, or that may be hereafter created, and fixing the maximum amount of expenses which may be incurred therefor during the fiscal year next to ensue, which amount must in no case exceed two per centum of the aggregate premiums returned as received, as provided in this section, and the whole of such amount, or so much thereof as may be necessary, may be assessed upon all insurance companies, corporations, associations, underwriters, agents, person, or persons who assume risks and accept premiums for fire insurance in said municipality, as hereinbefore mentioned, in proportion to the several amounts of

premiums returned, as received by each, as hereinafter provided, and

[Assessments, how collected.] Such assessment is collectable by and in the name of said corporation, in any court of law in the state of California having jurisdiction, in such manner and at such time or times as said corporation may determine.

[Payment of employees, etc., how provided for.] In order to provide for the payment of persons employed by said corporation, and to maintain suitable rooms, and apparatus for saving life and property contemplated, said corporation is empowered to require a statement to be furnished, semiannually, by all insurance companies, corporations, associations, underwriters, agents, or persons, of the aggregate amount of premiums received for insuring property in the municipality where said corporation is organized or established, for and during the six months next preceding the first day of July and the first day of January of each year, which statement must be sworn to by the president or secretary of the corporation or association, or by the agent or person so acting or affecting such insurance in said municipality, and must be handed to the secretary of said corporation heretofore created or hereafter to be created under the provisions of this chapter within ten days after the first day of July and the first day of January of each year. Said secretary must, within the ten days aforesaid, by written or printed demand signed by him, require from every insurance company, corporation, association, underwriter, agent, or person engaged in the business of fire insurance in the municipality where said corporation is organized or established, the statement hereinbefore provided for. Such demand may be delivered personally at the office of such insurance company, corporation, association, underwriter, agent, or person with-

in said municipality, and every officer of such insurance company, corporation, association, and every such underwriter, agent, or person, who, for fifteen days after said demand, neglects to render the statement herein provided for, forfeits fifty dollars for the use of said corporation, and also forfeits for its use twenty-five dollars in addition for every day he so neglects after the expiration of the said fifteen days, and such additional penalty may be computed and collected up to the time of the trial of any action brought for the recovery thereof. The penalty herein provided for may be sued for and collected, with costs, in any court of law within the state of California having jurisdiction, by and in the name of said corporation.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp 572-574; see introductory note to this chapter.

[This chapter was added at the recommendation of Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, pp. 359-366, held unconstitutional, see history, § 4 ante; re-enacted at instance Code Commissioner March 20, 1905, Stats. and Amdts. 1905, p. 418. A codification of Act March 19, 1891, Stats. and Amdts. 1891, p. 126. In connection with that Act see San Francisco Sav. Union vs. Long, 123 Cal. 107, 110, 55 Pac. Rep. 708; Murray vs. Superior Court, 129 Cal. 628, 633, 62 Pac. Rep. 191.]

CHAPTER VI.

LIFE, HEALTH, ACCIDENT, AND ANNUITY OR ENDOWMENT INSURANCE ON THE ASSESSMENT PLAN.

§ 453d. Contracts which may be made by, defined.
§ 453e. Formation of corporations; issuing of contracts; investments.
§ 453f. Pre-existing corporations, right of to reincorporate.
§ 453g. Contracts of insurance; contents and effects of.
§ 453h. Reserve and emergency fund.
§ 453i. Foreign corporations; conditions precedent to doing business in this state.
§ 453j. Limitations upon right to issue contracts of insurance.
§ 453k. Exemptions from attachment and execution.
§ 453l. Statements to be filed with the insurance commissioner; proceedings to be taken by him thereon.
§ 453m. Lapsing of policies, when forbidden.
§ 453n. Fees and penalties.
§ 453o. Insurance commissioner to present bills for certain expenses.
§ 453p. Exemption of fraternal societies from this chapter.

§ 453d. CONTRACTS WHICH MAY BE MADE BY, DEFINED. Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical disability of a person insured thereunder, or for the payment of any sums of money dependent in any degree upon the collection of assessments or dues from persons holding similar contracts, is deemed a contract of mutual insurance upon the assessment plan. Such contracts must

show that the liabilities of the insured thereunder are not limited to fixed premiums.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 418. See introductory note to this chapter.

A codification of § 1, Act March 19, 1891, Stats. and Amdts. 1891, p. 126.

§ 453e. **FORMATION OF CORPORATIONS; ISSUING CONTRACTS; INVESTMENTS.** Corporations may be formed to carry on the business of mutual insurance upon the assessment plan, and are subject only to the provisions of this chapter.

[Membership before contracts issued.] No such corporation must issue contracts of insurance until at least two hundred persons have applied, in writing, for membership or insurance therein, and have paid to the treasurer of such corporation the sum of five thousand dollars. This sum must be invested in bonds or securities, approved by the insurance commissioner of this state, or deposited in some bank in this state where it will earn interest.

[Deposit with state treasurer.] Said bonds or securities, or evidences of such deposit, must be placed, through the insurance commissioner of this state, with the state treasurer, and the principal sum must be held in trust for the contract-holders of such corporation, with the right in the corporation to exchange said bonds, securities, or evidence of bank deposit for others of like value. Such corporation must also, as a condition precedent to issuing any contracts of insurance, obtain the written certificate of the insurance commissioner that it has complied with the requirements of this chapter; and that the name of the corporation is not the same as that of any other corporation of this or other states, as indicated by the insurance department reports in his office; nor must the commissioner approve any name or title so closely resembling another as to mislead the public.

[No legal existence for one year, unless, etc.] No corporation formed hereunder has legal existence after one year from

the date of its articles, unless its organization has been completed and business commenced; nor must any corporation or individual solicit, or cause to be solicited, any business, until such corporation has complied with the provisions of section six hundred and thirty-three of the Political Code.

[Construction.] Nothing contained in this chapter shall be construed to exempt any corporation from the provisions of sections two hundred and ninety-six and two hundred and ninety-nine of this code.,

History: Enacted March 20, 1905, Stats. and Amdts. 1905, pp. 418-419. See introductory note to this chapter.

A codification of § 2 Act March 19, 1891, Stats. and Amdts. 1891, pp. 126-127.

§ 453f. **PRE-EXISTING CORPORATION, RIGHT OF TO REINCORPORATE.** Any existing corporation engaged in the business of life, health, accident, or endowment insurance on the assessment plan may reincorporate under the provisions of this code and chapter, but is not obliged to do so, and may, without such reincorporation, exercise the rights, powers, and privileges conferred by this chapter.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 419. See introductory note to this chapter.

A codification of § 3 Act March 19, 1891, Stats. and Amdts. 1891, p. 127.

§ 453g. **CONTRACTS OF INSURANCE; CONTENTS AND EFFECTS OF.** Every contract of insurance issued by such corporation must specify the sum or sums to be paid upon the happening of the contingency insured against, and when such payments must be made. Unless the contract is invalidated by fraud or by breach of its conditions, the corporation is obligated to pay the beneficiary the amount or amounts specified in its contract at the time or times therein named, and such indebtedness is a lien upon all the property of such corporation, with priority over all indebtedness thereafter incurred, except as hereinafter provided in case of insolvency.

[Forfeiture of right to do business by failure to pay.] Failure to make such payment, within thirty days after notice, at the home office, by mail, as provided by law, of a final judgment, unless waiver is made by the beneficiary, constitutes a forfeiture of the right to do business.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 419. See introductory note to this chapter.

A codification of § 4 Act March 19, 1891, Stats. and Amdts. 1891, p. 127.

§ 453h. RESERVATION AND EMERGENCY FUND. Every domestic corporation, organized to do or doing business of insurance on the assessment plan, must accumulate a reserve or emergency fund, which must, at all times, be not less than the largest benefit contracted to be paid by it to any one person. Every corporation organized under the provisions of this chapter must accumulate such fund within a year from the date of its certificate of incorporation.

[Investment of reserve or emergency fund.] Such fund, to the extent of the largest amount contracted to be paid by any such corporation to any one person, must be invested and deposited, as provided in section four hundred and fifty-three **e**, with the right in the corporation to exchange any such securities for others of equal value.

[Deposit part of fund.] The deposit required by section four hundred and fifty-three **e** constitutes a part of the reserve required by this section, at the option of such corporation. When any such corporation discontinues business, this fund must be returned to such corporation, or disposed of as may be determined by the superior court of the county in which is its principal place of business.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 418. See introductory note to this chapter.

A codification of § 5 Act March 19, 1891, Stats. and Amdts. 1891, pp. 127-128.

§ 453i. FOREIGN CORPORATIONS. CONDITIONS PRECEDENT TO DO BUSINESS IN THIS STATE. Corporations organized under the laws of any other state or country to transact the business of mutual assessment insurance must, as a condition precedent to transacting business in this state, comply with the provisions of sections four hundred and five and four hundred and eight of this code, and deposit with the insurance commissioner of this state a certified copy of its charter or other instrument required by its home authorities; a statement under oath, of its president or secretary, of its business for the preceding year, in such form as may be required by the insurance commissioner of this state; an appointment of a general agent, service upon whom binds the corporation; a certificate that for the next preceding twelve months it has paid in full the maximum amount named in its contract of insurance; a certificate from the proper officer of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums; and evidence, satisfactory to the insurance commissioner, that the corporation has accumulated a fund equal to that required of like corporations in this state, constituting a reserve or surplus fund, held in trust for the benefit of its contract-holders, and so invested and held as required by the laws of the state or government under which such corporation was organized.

[License, issuance, renewal, and revocation.] The insurance commissioner must thereupon issue a license to such corporation to do business in this state. This license must be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not true. Upon such revocation, notice thereof must be given by the insurance commissioner by publication in some newspaper published in the city and county of San

Francisco, for two weeks, daily, and no new contracts must be made by such company in this state.

[License, fees, taxes, and penalties.] When any other state or country imposes any additional license, fees, taxes, or penalties upon any corporation organized or doing business under this chapter, like license, fees, taxes, or penalties are imposed upon corporations of the same kind and their agents of such state or country doing business in this state.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, pp. 419-420. See introductory note to this chapter.

A codification of § 6 Act March 19, 1891, Stats. and Amdts. 1891, p. 128. As to appointment of agent upon whom service may be made, see Act April 1, 1872, Stats. 1871-2, p. 826.

§ 453j. **LIMITATIONS UPON RIGHT TO ISSUE CONTRACTS OF INSURANCE.** No corporation doing business under this chapter, except accident or casualty corporations, must issue a contract of insurance upon the life of any person under fifteen nor over sixty-one years of age.

Every such contract of insurance must be founded upon written application therefor, and, except where the application is for health, accident, or casualty insurance only, or for one hundred dollars life insurance or less, such application must be accompanied by the report of a reputable physician, containing a detailed statement of his examination of the applicant, showing the applicant to be in good health, and recommending the issuance of a contract of insurance.

[False or fraudulent statement by solicitor, etc.] Any solicitor, agent, employee, examining physician, or other person, making a false or fraudulent statement to any corporation doing business under this chapter, with reference to any application for insurance, or for the purpose of obtaining any money or benefit from such corporation, is guilty of a misdemeanor; and any person who makes a false statement of any material fact or thing in a sworn statement as to the death or disability of a contract-holder, in any such

corporation for the purpose of procuring or aiding the beneficiary or beneficiaries or contract-holder in procuring the payment of a benefit named in the contract, is guilty of perjury.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, pp. 420-421. See introductory note to this chapter.

A codification of Act March 19, 1891, Stats. and Amdts. 1891, pp. 128-129.

§ 453k. EXEMPTIONS FROM ATTACHMENT AND EXECUTION. The money, benefit, annuity, endowment, charity, relief, or aid to be paid as provided by the contracts issued by any corporation doing business under this chapter, is not liable to attachment or other process, nor to be seized, taken, appropriated, or applied by any legal or equitable process, nor by operation of law, to pay any debts or liability of the contract-holder or any beneficiary named thereunder.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 421. See introductory note to this chapter.

A codification of § 8 Act March 19, 1891, Stats. and Amdts. 1891, p. 129.

§ 453l. STATEMENT TO BE FILED WITH THE INSURANCE COMMISSIONER; PROCEEDINGS TO BE TAKEN BY HIM THEREON. Every corporation, whether domestic or foreign, doing the business of effecting insurance on the assessment plan must, annually, on or before the first day of February, file with the insurance commissioner, in such form as he may prescribe, a statement of its affairs for the year ending on the preceding thirty-first day of December. The insurance commissioner, in person or by duly authorized deputy, has the power of examination into the affairs of any domestic corporation doing business or claiming to do business under this chapter, at any time, in his discretion, and must make such examination at least once a year.

[Revoking authority to do business; procedure.] If he, after an examination of the affairs of a corporation, finds that it is not doing its business in conformity to this chapter, or that it is doing a fraudulent or unlawful business, or that it is not carrying out its terms of contract, or that it cannot, within three months from the date of notice of default, pay its obligations, he must cite the president, secretary, manager, or general agent of the corporation, or all of them, to appear before him, stating the time and place, to show cause why the authority of the corporation to do business should not be revoked, and if cause is not shown, then he must report the facts to the attorney-general of the state, who must commence proceedings in the proper court to restrain the corporation from doing any further business.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 421. See introductory note to this chapter.

A codification of §§ 9 and 10 Act March 19, 1891, Stats. and Amdts. 1891, p. 129. Compare Act 1856, Stats. 1856, p. 752. See In Matter Calif. Mut. L. Ins. Co., 181 Cal. 364, 22 Pac. Rep. 869; Murray vs. Superior Court, 129 Cal. 628, 633, 62 Pac. Rep. 191.

§ 453m. LAPSING OF POLICIES. WHEN FORBIDDEN. No policy or certificate issued by any corporation or association doing business under the provisions of this chapter lapses for the non-payment of any assessments, dues, or premiums, unless the corporation or association has first mailed to the insured under such policy or certificate, at his or her last given post-office address, a notice setting forth the amount to be paid, and the time the same is due and payable; and such notice must be mailed at least fifteen days before the assessment is due; provided, that such corporations doing business under this chapter as collect specific amounts at specific dates, as contained in the contract, are not compelled to send such notices; and an affidavit made by the officer, bookkeeper, or clerk of any such corporation having charge of the mailing of notices, setting

forth the facts as they appear on the records in the office of the said corporation, showing that such notice was mailed and the date of mailing, is conclusive evidence of the mailing of such notice.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 421-422. See introductory note to this chapter.

A codification of § 11 Act March 19, 1891, Stats. and Amdts. 1891, pp. 129-130.

§ 453n. **FEES AND PENALTIES.** The fees for filing statements, certificates, or other documents required by this chapter, or for any service or act of the insurance commissioner, and the penalties for any violation of this chapter, must, except as otherwise provided herein, be the same as provided in the laws of this state relating to life insurance companies, and must be disposed of as provided by such laws.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 422. See introductory note to this chapter.

A codification of § 12 Act March 19, 1891, Stats. and Amdts. 1891, p. 130.

§ 453o. **INSURANCE COMMISSIONER TO PRESENT BILLS FOR CERTAIN EXPENSES.** For all lawful expenses under this chapter, or by reason of any of its provisions, in the prosecution of any suit or proceeding, or otherwise, for the enforcement of the provisions of this chapter, the insurance commissioner must present bills, duly certified by him, and accompanied with vouchers, to the state board of examiners, who may allow the same, and direct payment thereof to be made; and the state controller must draw warrants therefor on the state treasurer for the payment of the same to the insurance commissioner, out of the general fund, in addition to the ordinary contingent expense.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 422. See introductory note to this chapter.

A codification of § 13 Act of March 19, 1891, Stats. and Amdts. 1891, p. 130.

§ 453p. **EXEMPTION OF FRATERNAL SOCIETIES FROM THIS CHAPTER.** The provisions of this chapter do not apply to secret or fraternal societies, lodges, or councils, which conduct their business and secure membership on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges, or councils, nor to any mutual or benefit association organized or formed and composed of members of any such society, lodge, or council exclusively.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 422. See introductory note to this chapter.

A codification of § 14 Act March 19, 1891, Stats. and Amdts. 1891, p. 130.

[A new chapter is hereby added (Stats. and Amdts. 1913, p. 490) to the Civil Code, to be known as chapter VII, of title II, of part IV, of division first, of said Civil Code, relating to title insurance corporations, and to read as follows:]

CHAPTER VII.

TITLE INSURANCE CORPORATIONS.

§ 453s. Title insurance companies subject to insurance laws and insurance commissioner.
§ 453t. Guarantee fund and investments.
§ 453u. Title insurance surplus fund.
§ 453v. Policy of title insurance defined.
§ 453w. Further powers of title insurance companies.
§ 453x. Combined title insurance and trust company.
§ 453y. Must have certificate of insurance commissioner before issuing policy.
§ 453z. Loans to directors, officers and employees [prohibited].

§ 453s. TITLE INSURANCE COMPANIES SUBJECT TO INSURANCE LAWS AND INSURANCE COMMISSIONER. Every title insurance company shall be subject to and shall comply with all the requirements of the insurance laws and the rules and regulations of the insurance department of this state, and the insurance commissioner shall have the same power and authority regarding any such corporation that he may exercise in relation to other insurance corporations organized under the laws of this state, including the right to examine and inspect the financial condition and affairs of such company relating to the insurance business of such company, and to compel compliance with the provisions of law governing any such corporation.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 490. **In effect** August 10, 1913.

§ 453t. GUARANTEE FUND AND INVESTMENTS. Every title insurance company, before issuing any guarantee

or policy of insurance, shall deposit with the state treasurer, as herein provided, as a "guarantee fund" for the security and protection of the holders of, or beneficiaries under, such guarantees or policies of insurance, one hundred thousand dollars. Any such deposit may be made either in lawful money of the United States or in any of the securities specified in subdivisions one, two, three, four and five of section four hundred twenty-one of this code. Said money or securities shall be first approved by the insurance commissioner, and upon his written order, deposited with the state treasurer for the purpose herein specified, and said treasurer shall give his receipt therefor, and thereafter, subject to the provisions of this chapter, shall hold such deposits of money or securities for the security and protection of the holders of, or beneficiaries under, any guarantee or policy of insurance issued by such company, and the state shall be responsible for the custody and safe return of any money or securities so deposited. Said securities or money so deposited may, with the approval of the insurance commissioner, be withdrawn or exchanged from time to time for other like securities, or lawful money, receivable as aforesaid. So long as the company so depositing said money or securities shall continue solvent, it shall have the right and shall be permitted by the state treasurer to receive the interest and dividends on any securities so deposited. Said securities and money shall be subject to sale and transfer, and to the disposal of the proceeds thereof by said state treasurer only on the order of a court of competent jurisdiction and for the security and protection of the holders of such guarantees and policies of insurance.

[Mortgages.] When any part of the securities so deposited with the state treasurer consists of notes or bonds secured by mortgage or deed of trust, or in loans upon real property secured by mortgage or deed of trust, such mortgages or deeds of trust shall be accompanied by evidence of title issued by a person, company, or corporation designated or approved by the insurance commissioner and authorized by

law or otherwise found by the insurance commissioner to be competent to issue such evidence of title. Such evidence of title shall consist either of a full abstract of title, a full certificate of title, or a guarantee or policy of title insurance, and such evidence of title shall be examined and approved by or under the direction of the insurance commissioner. The value of the property covered by each such mortgage or deed of trust shall be appraised by one or more appraisers selected or approved by the insurance commissioner. The appraisers shall be residents of the county in which the property or some part thereof is situated. The reasonable cost of examining such evidence of title and of making such appraisement, shall be paid by the title insurance company making such deposit, and shall not exceed twenty dollars for examining the title to the property covered by each mortgage or deed of trust, nor five dollars for each appraiser, not exceeding two, besides the necessary expenses of such appraisers; provided, that as to any part of the securities so deposited with the state treasurer which consists of notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance, or of mortgage participation certificates, issued by a mortgage insurance company in accordance with the provisions of chapter VIII of title II of part IV of division first of the Civil Code, such evidence of title need not be required.

[Plant investment.] Any such corporation organized under the laws of this state and having a capital stock paid in, in cash, of more than one hundred thousand dollars, after depositing said guarantee fund as above provided, may invest an amount not exceeding fifty per cent of its subscribed capital stock in the preparation and purchase of materials or plant necessary to enable it to engage in such title insurance business; and such materials or plant shall be deemed an asset, valued at the actual cost thereof, in all statements and proceedings required by law for the ascertainment and determination of the condition of such corporation, or at

such lesser value as may be estimated by such corporation in any such statement or proceeding, or omitted entirely therefrom.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 490; amended June 7, 1915, Stats. and Amdts. 1915, p. 1265. **In effect** August 8, 1915.

§ 453u. **TITLE INSURANCE SURPLUS FUND.** Every title insurance company shall annually set apart a sum equal to ten per cent of its premiums collected during the year, which sums shall be allowed to accumulate until a fund shall have been created equal in amount to twenty-five per cent of the subscribed capital stock of such corporation. Such fund shall be maintained as a further security to holders of the guaranties and policies of insurance issued by such corporation, and shall be known as the "Title insurance surplus fund;" and if at any time such fund shall be impaired by reason of a loss, the amount by which it may be impaired shall be restored in the manner hereinabove provided for its accumulation. The reporting of a loss shall be deemed an impairment of such fund for the purposes of this section.

[Dividends.] Such corporation must not make any dividends except from profits remaining on hand after retaining unimpaired:

1. The entire subscribed capital stock.

2. The amount set apart as a surplus fund under the provisions of this section.

3. A sum sufficient to pay all liabilities for expenses and taxes, and all losses reported or in course of settlement, without impairment of the title insurance surplus fund required to be set apart as hereinabove provided.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 491. **In effect** August 10, 1913.

§ 453v. **POLICY OF TITLE INSURANCE DEFINED.** Any written contract or instrument purporting to show the

title to real property, or furnish information relative thereto, which shall in express terms purport to insure or guarantee such title or the correctness of such information, shall be deemed a policy of title insurance.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 491. **In effect** August 10, 1913.

§ 453w. **FURTHER POWERS OF TITLE INSURANCE COMPANIES.** Every title insurance company organized under the laws of this state shall also have power to guarantee or insure the identity, due execution, and validity of any note or bond secured by mortgage or trust deed, and the identity, due execution and validity and recording of any such mortgage or trust deed, and the identity, due execution and validity of bonds, notes or other evidence of indebtedness issued by this state, or by any county, city and county, city, school district, irrigation district or other municipality or district therein, or by any private or public corporation, and to act as registrar or transfer agent of this state, or of any county, city and county, city, school district, irrigation district, or other municipality or district therein, or of any private or public corporation, and to transfer or countersign any such bonds, notes or other evidence of indebtedness and to transfer or countersign certificates of stock of any private or public corporation.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 491. **In effect** August 10, 1913.

§ 453x. **COMBINED TITLE INSURANCE AND TRUST COMPANY.** Any title insurance corporation incorporated under the general incorporation laws of this state, authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depository, agent or trustee, or to do a general trust business, and having a capital of not less than three hundred thousand dollars actually paid in, in cash, may also do business as a trust

company, and maintain a trust department as well as a title insurance department, on compliance with the following conditions:

1. **[Consent of superintendent of banks, and of insurance commissioner.]** When such title insurance company desires to do such a departmental business, it shall first obtain the consent of both the superintendent of banks and of the insurance commissioner, and in its application for such consent, must file a statement making a segregation of its capital and surplus for each such department. At least two hundred thousand dollars of its capital must be apportioned by such statement to its trust department. The respective portions of such capital and surplus, when such apportionment has been approved by the superintendent of banks and by the insurance commissioner, shall be considered and treated as the separate capital and surplus of each such department respectively, as if each such department was a separate business.

2. **[Title department subject to insurance laws.]** Such company, as to its title insurance department, shall be subject to and shall comply with all the requirements of the insurance laws and the rules and regulations of the insurance department of this state, and may invest its capital apportioned to its title insurance department, and the accumulations therefrom, in the securities in which the capital and accumulations of insurance companies are allowed by the laws of this state to be invested, including the materials and plant necessary to enable it to engage in the title insurance business, as provided in this chapter.

3. **[Trust department subject to banking laws.]** Such company, as to its trust department, shall be subject to and shall comply with all the requirements of the banking laws and the rules and regulations of the state banking department of this state, and may invest its capital apportioned to its trust department, and the accumulations therefrom, and

trust funds received by it, in accordance with the laws of this state relative to the investment of funds of trust companies.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 492. **In effect** August 10, 1913.

§ 453y. **MUST HAVE CERTIFICATE OF INSURANCE COMMISSIONER BEFORE ISSUING POLICY.** No corporation shall make any contract or issue any policy of guarantee or insurance affecting titles to real estate, or engage in the business of a title insurance company, until it has obtained from the insurance commissioner his certificate that such company has complied with the provisions of this chapter and is duly authorized to do business as such title insurance company.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 492; amended June 7, 1915, Stats. and Amdts. 1915, p. 1266. **In effect** August 8, 1915.

§ 453z. **LOANS TO DIRECTORS, OFFICERS AND EMPLOYEES [PROHIBITED].** No loan shall be made by any title insurance company, directly or indirectly, to any of its officers or directors or employees or to any member of the family of any officer or director.

[Penalty]. Any officer, director, agent or employee of any such company who knowingly consents to any violation of the terms or provisions of this section shall be guilty of a misdemeanor.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 493. **In effect** August 10, 1913.

[This is a new chapter added to Title II of Part IV of Division One of the Civil Code by Act approved June 6, 1913 (Stats. and Amdts. 1913, p. 479; amended by Act approved June 15, 1915) (Stats. and Amdts. 1915, p. 1538) to read as follows:]

CHAPTER VIII.

MORTGAGE INSURANCE.

§ 453aa. Mortgage insurance companies subject to insurance laws and the authority of insurance commissioner.
§ 453bb. Mortgage insurance company defined. The term "security" as used in this chapter defined. Policy of mortgage insurance defined. Mortgage participation certificate defined. Entire mortgage guaranty defined.
§ 453cc. Requisite capital stock of mortgage insurance company; certificate of authority required. Kind and amount of securities that may be guaranteed. Policies of mortgage insurance do not constitute "debts" or "indebtedness" of issuing company. Can not invest in, hold or own capital stock of another corporation, except as provided herein.
§ 453dd. Must accumulate a surplus. Restriction on making of dividends.
§ 453ee. Investments permitted.
§ 453ff. Mortgage participation certificates and guaranteed securities made legal investments for trust funds, insurance companies and others.
§ 453gg. Quarterly reports to insurance commissioner.
[§ 453hh. Quarterly report to insurance commissioner]. [Repealed by omission and incorporation].

§ 453aa. MORTGAGE INSURANCE COMPANIES SUBJECT TO INSURANCE LAWS AND THE AUTHORITY OF INSURANCE COMMISSIONER. Every mortgage insurance company shall be subject to and shall comply with all the requirements of the laws of this state made applicable to insurance companies generally and the rules and regulations of the insurance department of this state, excepting in so far as said laws, rules or regulations may be inconsistent with the other provisions in this chapter con-

tained; and the insurance commissioner shall have the same power and authority over such company that he may exercise in relation to other insurance companies, including the right to examine and inspect the financial condition and affairs of such company relating to the business of such company, and to compel compliance with the provisions of law governing any such company.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 479; amended June 15, 1915, Stats. and Amdts. 1915, p. 1539. **In effect** August 11, 1915.

§ 453bb. MORTGAGE INSURANCE COMPANY DEFINED. THE TERM "SECURITY" AS USED IN THIS CHAPTER DEFINED. POLICY OF MORTGAGE INSURANCE DEFINED. MORTGAGE PARTICIPATION CERTIFICATE DEFINED. ENTIRE MORTGAGE GUARANTEE DEFINED. The term "mortgage insurance company" shall include every association, corporation, firm or person who shall engage as a business in making and issuing policies of mortgage insurance.

The term "security" wherever used in this chapter, without a different meaning being specified or made apparent, shall be construed to refer to and include within its meaning a note or notes, or bond or bonds, together with the mortgage or deed of trust securing the same which evidence a debt secured by a first lien on a marketable title in fee to real estate, or to real estate with improvements thereon.

Any contract made and issued by a mortgage insurance company which purports to guarantee or insure against loss on, or to guarantee the payment of, within a specified time, the whole, or any part, of the principal, interest or other sums agreed to be paid under the terms of any security, or other sums secured under the terms of any security, shall be deemed, and is hereby designated, a "policy of mortgage insurance."

A policy of mortgage insurance which evidences the ownership by the insured of an undivided or other partial share

or interest, or the right to participate to a specified extent, in a security, or in a group consisting of several securities, and purports to guarantee the payment of such securities, or the payment of such undivided or other partial share or interest therein, or the amount of such participation, may be referred to as, and is hereby designated, a "mortgage participation certificate."

A policy of mortgage insurance, other than a mortgage participation certificate, which covers and refers to the entire indebtedness evidenced by a security, may be referred to as, and is hereby designated, an "entire mortgage guaranty."

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 479; amended June 15, 1915, Stats. and Amdts. 1915, p. 1539. **In effect** August 11, 1915.

§ 453cc. REQUISITE CAPITAL STOCK OF MORTGAGE INSURANCE COMPANY; CERTIFICATE OF AUTHORITY REQUIRED. KIND AND AMOUNT OF SECURITY THAT MAY BE GUARANTEED. POLICIES OF MORTGAGE INSURANCE DO NOT CONSTITUTE "DEBTS" OR "INDEBTEDNESS" OF INSURING COMPANY. CANNOT INVEST IN, HOLD OR OWN CAPITAL STOCK OF ANOTHER CORPORATION, EXCEPT AS PROVIDED HEREIN. No mortgage insurance company shall engage in business, or issue any policy of mortgage insurance, within this state without having at least two hundred and fifty thousand dollars in capital stock fully paid in, in cash; nor until after having obtained from the insurance commissioner his certificate that such company has complied with the laws of this state applicable thereto and is duly authorized to do business as a mortgage insurance company.

[First lien security.] No mortgage insurance company shall guarantee the payment of any security except the same be a first lien upon a marketable title in fee to the property covered thereby. No mortgage insurance company shall

issue any policy of mortgage insurance guaranteeing the payment of any portion of any security exceeding fifty per centum of the market value of the real estate with improvements covered by the same. No mortgage insurance company shall have at any time outstanding policies of mortgage insurance guaranteeing the payment of securities the aggregate amount of the unpaid principal of which exceeds twenty times the amount of its paid up capital. The making and issuing of policies of mortgage insurance under this act by mortgage insurance companies must not be construed to be the creation of debt within the meaning of the phrase "create any debts" in section three hundred nine of the Civil Code, nor of indebtedness within the meaning of the phrase "such capital stock can not be diminished to an amount less than the indebtedness of the corporation" in section three hundred fifty-nine of the Civil Code, except that no mortgage insurance company shall reduce its capital stock to an amount less than is required by this act to be maintained by such mortgage insurance company, or less than the indebtedness of such mortgage insurance company other than such policies of mortgage insurance.

[Not to hold stock of other company.] No mortgage insurance company shall invest in, hold or own any of the capital stock of any other corporation, or make any loan, in whole or in part, on the security of capital stock of any other corporation; provided, that a mortgage insurance company make take in its own name as pledgee, in connection with any loan conforming to the provisions of sudivision five of section four hundred fifty-three **ee,** stock in a water or power corporation in cases where such stock represents the right to receive or obtain water or power for the irrigation or cultivation, or other beneficial use thereon, of the real estate covered by the loan, whether such right be appurtenant thereto or otherwise; and if such loan be used as a part of a security or of a group of securities taken as the basis for the issue of mortgage participation certificates, may

assign such stock to a trust company as a part of the security or securities required to be assigned by the terms of section four hundred fifty-three ff. Said company may also hold, use, transfer or dispose of any such stock for the benefit and protection of such loans.

[No loan to officers.] No loan shall be made by any mortgage insurance company directly or indirectly to any of its officers or directors.

[Penalty.] A violation of any of the terms or provisions of this section shall not make any security or any policy of such company void or voidable, but any officer, director, agent or other employee of any mortgage insurance company who knowingly consents to any violation of any of the terms or provisions of this section shall be guilty of a misdemeanor.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 479; amended June 15, 1915, Stats. and Amdts. 1915, p. 1539. **In effect** August 11, 1915.

§ 453dd.—MUST ACCUMULATE A SURPLUS. RESTRICTION ON MAKING DIVIDENDS. Every mortgage insurance company shall annually set apart a sum equal to ten per centum of its net earnings collected during the year, which sums shall be allowed to accumulate until a fund shall have been created equal in amount to twenty-five per centum of the paid up capital stock of such company. Such fund shall be maintained as a further security to the holders of policies of mortgage insurance issued by such company, and shall be known as the "surplus;" and if at any time such surplus shall be impaired by reason of a loss, the amount by which it may be impaired shall be restored in the manner hereinabove provided for its accumulation. All additions to said surplus, whether made in fulfillment of the requirements of this section or voluntarily by the company, shall be and remain subject to the provisions of this law.

[Dividends.] Such company must not make any dividends except from profits remaining on hand after retaining unimpaired:

1. The entire capital stock.

2. The amount set apart as a surplus under the provisions of this section.

3. A sum sufficient to pay all liabilities for expenses and taxes, and all losses reported or in course of settlement, without impairment of said surplus.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 479; amended June 15, 1915, Stats. and Amdts. 1915, p. 1540. **In effect** August 11, 1915.

§ 453ee. **INVESTMENTS PERMITTED.** A mortgage insurance company may invest its capital, surplus, and accumulations in the purchase of, or loans upon, any of the obligations specified in subdivisions one to six inclusive of this section:

1. **Bonds or interest-bearing notes or obligations of the United States** or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

2. **Bonds of this state** or those for which the faith and credit of the State of California are pledged for the payment of principal and interest and bonds of any other state in the United States that has not, within five years next preceding such investment by such insurance company, defaulted in payment of any part of either principal or interest due upon any legally authorized bond issue.

3. **Bonds or interest-bearing notes or obligations issued under authority of law by any county,** municipality or school district in this state or in any other state or territory of the United States; provided, that said county, municipality or school district or the state or territory in which it is located has not, within five years next preceding such investment by

such insurance company, defaulted in payment of any part of either principal or interest due upon any legally authorized bond issue.

4. **Bonds of a permanent road division in this state,** and any irrigation district bonds which the law may now or hereafter authorize as legal investments for insurance companies; provided, that the total amount of bonds issued by any such irrigation district does not exceed sixty per centum of the aggregate market value of the lands within such district, and of the water, water rights, canals, reservoirs, reservoir sites and irrigation works owned or to be acquired or constructed with the proceeds of any such bonds, by said district, such facts in reference to bonds of irrigation districts to be determined by a commission now or hereafter authorized by law to ascertain and report upon such facts.

5. **Notes or bonds secured by first mortgage or deed of trust** or other first lien upon real estate, improved or unimproved; provided, that the principal so lent or the entire note or bond issue so secured shall not exceed fifty per centum of the market value of such real estate, or of such real estate with improvements; provided, also, in case said loan is made, or said note or bond issue created as or for a building loan on real estate, that at no time shall the principal so lent or the entire outstanding note or bond issue exceed fifty per centum of the market value of the real estate and the actual cost of the improvements thereon.

6. **Securities guaranteed by a mortgage insurance company** operating under the laws of the State of California, also mortgage participation certificates issued by any such company in accordance with the provisions of this chapter, including securities guaranteed and mortgage participation certificates issued by the investing company.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 480; amended June 12, 1915, Stats. and Amdts. 1915, p. 1541. **In effect** August 11, 1915.

§ 453ff. **MORTGAGE PARTICIPATION CERTIFICATE AND GUARANTEED SECURITIES MADE LEGAL INVESTMENTS FOR TRUST FUNDS, INSURANCE COMPANIES AND OTHERS.** Mortgage participation certificates, also securities guaranteed by policies of mortgage insurance issued in conformity with the provisions of this chapter shall be legal investments for all trust funds held by any executor, administrator, guardian, trustee or other person holding trust funds, also for the funds of insurance companies, banks, banking institutions and trust companies, and shall be accepted by the State of California, its officers and officials, as securities comprising any part of any fund or deposit required by law to be made with the State of California, or any officer or official thereof, by any trust company or insurance company doing business in the State of California, and all premiums required to be paid according to the terms of any such mortgage participation certificate, or other policy of mortgage insurance, may be charged to or paid out of the income from the note or notes or bond or bonds covered thereby;

[Supervision of state banking department.] Provided, that the foregoing provisions of this section, in so far as they refer to mortgage participation certificates, shall apply only to such mortgage participation certificates as evidence the ownership of shares or interests in, or participation in, securities which shall have been assigned to a trust company organized and doing business under the laws of and within this state and shall be held by such trust company for the common and equal benefit of the holders of all mortgage participation certificates issued or to be issued evidencing the ownership of shares or interests in, or participation in, any particular security or group of securities so assigned and such trust, and the administration thereof, shall at all times be and hereby is expressly made subject to the inspection, supervision and control of the superintendent of banks as fully and completely as if the same

constituted a court trust under the provisions of the bank act; provided, also, that each such mortgage participation certificate must bear the certificate of such trust company to the effect that the aggregate amount of mortgage participation certificates then outstanding, including both the one being certified and all others based on the same security or group of securities, does not exceed the amount of the unpaid principal of the debt or debts evidenced by such particular security or group of securities; provided, also, that each security so assigned shall be accompanied by a copy of the appraisement and of the certificate of the directors filed or to be filed with the insurance commissioner as required by the provisions of this chapter; provided also, that a copy of each such appraisement and accompanying certificate of the directors shall be promptly, upon the assignment of each such security, transmitted to the superintendent of banks, and that each such copy of appraisement so transmitted shall bear an endorsement or certificate executed by the trust company to which each such security is so assigned reciting and setting forth the amount of the unpaid principal named in the security which covers the property described in such appraisement;

[Proviso as to securities deposited with state treasurer.] Provided, also, that if any such mortgage participation certificates, or securities guaranteed by policies of mortgage insurance issued in conformity with the provisions of this chapter, are used as securities comprising any part of any fund or deposit required by law to be made with the state treasurer by a trust company, the securities so guaranteed or the ownership of, or participation in, which is evidenced by such participation certificates must constitute a first lien on improved and productive real estate in the State of California, such improved real estate being worth at least double the amount of such lien; and also that the real estate and improvements which are covered by the lien of any security so guaranteed or the ownership of, or participation

in, which is evidenced by mortgage participation certificates which are so used shall be reappraised at least once every two years and in the manner in this chapter provided for appraisements, and a copy of each such reappraisement shall be filed with the trust company to which such security shall have been assigned and the original of each such reappraisement bearing the endorsement or certificate of such trust company as to the amount of the unpaid principal named in such security shall be filed with the superintendent of banks; provided, further, that the legality or validity of entire mortgage guaranties and mortgage participation certificates heretofore issued which fully conform to and comply with the law in force at date of issuance shall not be affected or impaired by the provisions of this chapter and such entire mortgage guaranties and mortgage participation certificates shall continue to be legal investments and recognized for all purposes to the extent and in the manner provided by the law in force at date of such issuance.

[Substitution of securities.] A mortgage insurance company which issues mortgage participation certificates in accordance with the provisions of this section may at any time and from time to time substitute for any security or securities comprising or constituting a part or parts of a group of securities, the ownership of, or participation in, which is evidenced in whole or in part by any such participation certificates, other securities similarly guaranteed by it and withdraw from the trust company the security or securities for which such substitution shall be made; provided, however, that at all times the amount of the unpaid principal of the debts evidenced by the particular group of securities held by such trust company and affected by any such substitution shall not be less than the aggregate amount of the participation certificates theretofore issued then outstanding and evidencing the ownership of undivided or other partial shares or interests, or participation, in such group of securities; and provided, further, that the right

of substitution hereinbefore provided and the exercise thereof shall not alter or affect the status of such participation certificates as legal investments for trust funds, insurance companies, banks, banking institutions and trust companies as hereinbefore provided, or as securities acceptable by the State of California, its officers and officials, as comprising or constituting any fund or deposit, or any part thereof, required by law to be made with the State of California, or any officer or official thereof, by any trust company or insurance company doing business in the State of California.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 480; amended June 15, 1915, Stats. and Amdts. 1915, p. 1542. **In effect** August 11, 1915.

§ 453gg. **QUARTERLY REPORTS TO INSURANCE COMMISSIONER.** Every mortgage insurance company shall make a report in writing to the insurance commissioner, which report shall be made quarterly, and shall be verified by the oath of its president or vice president, and its secretary or treasurer or of any two of its principal officers. Such report shall contain a statement of each new policy of mortgage insurance issued by such company since the last preceding report, stating specifically whether such policy constitutes an entire mortgage guaranty or a mortgage participation certificate.

[When policy constitutes entire mortgage guaranty.] When such policy constitutes an entire mortgage guaranty, such report shall set forth separately the following facts regarding the security on which the policy is based, namely:

1. The aggregate amount of the unpaid principal indebtedness evidenced by such security.

2. A description of the property covered by such security.

3. Separately, the market value of the land and the market value of the improvements thereon, if any, as shown by an

appraisement as provided for by the terms of this section, also the aggregate value of such land and improvements.

4. The book and page of the record of the mortgage or deed of trust which is a part of such security.

[When policy constitutes mortgage participation certificate.] When such policy constitutes a mortgage participation certificate such report shall set forth, directly or by reference to a previous report, separately the following facts regarding the security or securities on which such participation certificate is based, namely:

1. The aggregate amount of unpaid principal indebtedness evidenced and secured by such security or securities, and, separately, the amount of the unpaid principal indebtedness evidenced and secured by each such security.

2. A description of the property covered by each such security.

3. Separately, the market value of the land and the market value of the improvements thereon, if any, as shown by an appraisement as provided for by the terms of this section, also the aggregate value of such land and improvements.

4. The book and page of the record of each mortgage and deed of trust which is part of such security or securities.

5. The aggregate amount of participation certificates issued, outstanding and based upon the particular security or group of securities on which the certificate so reported is based.

[Appraisement of property.] There shall be filed with such report an appraisement of each separate parcel of property mentioned in the report, an appraisement of which has not theretofore been made and filed in accordance with the provisions of this section, which appraisement shall be made by a person or corporation approved by the insurance commissioner and by the superintendent of banks. In such appraisement the market value of each parcel of land and of the improvements thereon, if any, also the aggregate value

of such parcel of land and improvements shall be stated, together with a general statement of the character of such land and of the kind and condition of such improvements, if any.

Such appraisement shall be signed and verified by such appraiser, or by an officer of the corporation making such appraisement, and shall be accompanied by a certificate signed and verified by at least three directors of such mortgage insurance company to the effect that in the opinion of the affiants and each of them such appraisement is correct, and that in their opinion the amount thereof does not exceed the market value of the property, and that the principal amount lent on the security of such property does not in their opinion exceed fifty per centum of the market value of such property, also to the effect that said company has in its possession or control evidences of title consisting of a full abstract of title, a full certificate or guaranty of title, or a policy of title insurance, showing that the mortgage or deed of trust securing such loan is a first lien upon a marketable title in fee to the property covered thereby.

[Penalty.] In case of the neglect or failure of any such mortgage insurance company to make any such quarterly report as herein provided, such company shall forfeit to the State of California ten dollars per day for every day during which such neglect or failure continues; provided, however, that the insurance commissioner shall have authority to extend the time within which any such report may be filed for not exceeding a period of ten days.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 481; amended June 15, 1915, Stats. and Amdts. 1915, p. 1544. **In effect** August 11, 1915.

§ 453hh. **SAME** [repealed by omission and incorporation].

Note: There is no provision in Chapter 769 of Statutes of 1915, p. 1538, repealing § 453hh, as enacted June 6, 1913, Stats. and Amdts. 1913, p. 482, other than that the title to the Act indicates the intention of the legislature to revise all of Chapter VIII, of Title II, of Part IV, of Division One, relative to mortgage insurance, and thereby revises and re-enacts the sections as above given, omitting said § 453hh and all reference thereto. The provisions of § 453hh are incorporated in the sections given above, and the section repealed by omission.

TITLE III.

RAILROAD CORPORATIONS.

Chapter I. Officers and Corporate Stock, §§ 454-459.
II. Enumeration of Powers, §§ 465-478.
III. Business, How Conducted, §§ 479-494.

CHAPTER I.

OFFICERS AND CORPORATE STOCK.

§ 454. Directors to be elected, when.
§ 455. Additional provisions in assessment and transfer of stock.
§ 456. Railroad corporations may borrow money and issue bonds, etc. [Interest; limitation of amount.]
§ 457. To provide a sinking fund to pay bonds.
§ 458. Capital stock to be fixed.
§ 459. Certificate of payment of fixed capital stock.

§ 454. **DIRECTORS TO BE ELECTED, WHEN.** Directors of railroad corporations may be elected at a meeting of the stockholders other than the annual meeting, as a majority of the fixed capital stock may determine, or as the by-laws may provide; notice thereof to be given as provided for notices of meetings to adopt by-laws in article two, chapter one, title one, of this part.

History: Enacted March 21, 1872.

§ 455. **ADDITIONAL PROVISIONS IN ASSESSMENT AND TRANSFER OF STOCK.** No stock in any railroad corporation is transferable until all the previous calls or instalments thereon have been fully paid in;

[Transfer not valid, except.] Nor is any such transfer valid, except as between the parties thereto, unless at least

twenty per cent has been paid thereon and certificates issued therefor, and the transfer approved by the board of directors.

History: Enacted March 21, 1872.

§ 456. **RAILROAD CORPORATIONS MAY BORROW MONEY AND ISSUE BONDS, ETC. [INTEREST; LIMITATION OF AMOUNT].** Railroad corporations may borrow, on the credit of the corporation and under such regulations and restrictions as the board of directors thereof, by unanimous concurrence, may impose, such sums of money as may be necessary for constructing and completing their railroad with its equipments, and for the purchase of all necessary rolling stock and all else relative thereto, and may issue promissory notes therefor, or may issue and dispose of bonds to raise moneys necessary to pay therefor, at a rate of interest not exceeding ten per cent per annum; and may also issue bonds, or promissory notes, at the same rate of interest in payment of any debts or contracts for constructing and completing their road, with its equipments and rolling stock, and all else relative thereto, and for the purchase of railroads and other property within the purpose of the corporation.

The amount of bonds, or promissory notes, issued for such purposes must not exceed in all the amount of their capital stock; and to secure the payment of such bonds, or notes, they may mortgage their corporate property and franchises, or may secure the payments of such bonds, or notes, by deed of trust of their corporate property and franchises. Any person or corporation formed under the laws of this state, or of any other state within the United States, that the directors of the railroad corporation may, by unanimous concurrence, select, may be trustees in such deed of trust.

History: Enacted March 21, 1872; amended April 15, 1880, Code Amdts. 1880 (C. C. pt.), p. 10; March 9. 1897, Stats. and Amdts. 1897, p. 73; March 4, 1899, became a law, under constitutional provision, without Governor's approval, Stats. and Amdts. 1899, p. 57.

§ 457. TO PROVIDE SINKING FUND TO PAY BONDS. The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond or note so issued, for money borrowed or in payment of any debt or contract for the construction and equipment of such road, the right to convert the principal due or owing thereon into stock of such corporation, at any time within eight years from the date of such bonds, under such regulations as the directors may adopt.

History: Enacted March 21, 1872. This section is founded upon § 15 Act May 20, 1861 (Stats. 1861, § 15, p. 607), as amended by § 1 Act May 4, 1862 (Stats. 1862, § 1, p. 547).

Construction of section original act.—See McLane vs. Placerville & S. V. R. Co., 69 Cal. 606, 609, 6 Pac. Rep. 748.

§ 458. CAPITAL STOCK TO BE FIXED. When, at any time after filing the articles of incorporation, it is ascertained that the capital stock therein set out is either more or less than actually required for constructing, equipping, operating, and maintaining the road, by a two-third[s] vote of the stockholders the capital stock must be fixed, and a certificate thereof, and of the proceedings had to fix the same, must be made out and filed in the office of the secretary of state.

History: Enacted March 21, 1872.

§ 459. CERTIFICATE OF PAYMENT OF FIXED CAPITAL STOCK. Within thirty days after the payment of the last instalment of the fixed capital stock of any railroad corporation organized under this title and part, the president and secretary and a majority of the directors thereof must make, subscribe, and file in the office of the secretary of state a certificate, stating the amount of the fixed capital stock, and that the whole thereof has been paid in. The certificate must be verified by the affidavit of the president and secretary.

History: Enacted March 21, 1872.

CHAPTER II.

ENUMERATION OF POWERS.

§ 465. Powers of railroad corporations.
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§ 466. Map and profile to be filed.
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§ 472. When crossing railroads or highways, how other lands acquired.
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§ 474. State lands granted for use of corporations.
§ 475. Grant not to embrace town lots.
§ 476. Wood, stone, and earth may be taken from state lands.
§ 477. Lands to revert to state, when.
§ 478. Selections made, how proved and certified to.

§ 465. POWERS OF RAILROAD CORPORATIONS.

Every railroad corporation has power:

1. **[To make survey for road.]** To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents and employees may enter upon the lands or waters of any person, subject to liability for all damages which they may do thereto;

2. **[To accept real estate.]** To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property, which may be made to it to aid and encourage the construction, maintenance and accommodation of such railroad.

3. **[To acquire real estate.]** To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroads, and for all stations, depots and other purposes necessary to successfully work and conduct the business of the road;

4. **To lay out its road, not exceeding ten rods wide,** and to construct and maintain the same, with one or more tracks, and with such appendages and adjuncts as may be necessary for the convenient use of the same;

5. **To construct their roads across,** along or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue or highway, or across any railway, canal, ditch or flume which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch or flume thus intersected to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;

6. **To cross, intersect, join, or unite its railroad with any other** railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections and connections, the same shall be ascertained and determined as is provided in title seven, part three, Code of Civil Procedure (secs. 1237-1263);

7. **To purchase lands, timber, stone, gravel or other materials** to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in title seven, part three, Code of Civil Procedure, for the condemnation of lands; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation;

8. **To carry persons and property** on their railroad, and to receive tolls or compensation therefor;

9. **To erect and maintain all necessary and convenient buildings,** stations, depots, fixtures and machinery for the accommodation and use of their passengers, freight and business;

10. **To regulate the time and manner in which passengers and property shall be transported,** and the tolls and compensation to be paid therefor within the limits prescribed by law and subject to alteration, change or amendment by the legislature at any time;

11. **To regulate the force and speed of their locomotives,** cars, trains or other machinery used and employed on their roads, and to establish, execute and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations;

12. **[To purchase other roads.]** To purchase, lease or acquire the franchises, rights and property, or any part thereof, of any railroad corporation, leasing or owning any railroad outside of the state of California, and to operate the same, and to use the franchises of any such road, and to build and operate extensions thereof;

[Restrictions.] Provided that nothing herein shall authorize any corporation to purchase the franchises, rights, and property of any railroad operated in competition with it; and to purchase, acquire and hold the stocks, bonds or other

securities of any railroad corporation organized under the laws of this state or of any other state or territory, with full power to sell the same; provided that nothing herein will authorize any corporation to purchase the stock of any railroad corporation operated in competition with it.

History: Enacted March 21, 1872, founded upon and is a substantial re-enactment of § 17 of Act May 20, 1861, Stats. 1861, pp. 614-616; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 367, held unconstitutional, see history, § 69 ante; amendment re-enacted and paragraph 12 added, March 20, 1903, Stats. and Amdts. 1903, pp. 245, 246; amended March 4, 1907, Stats. and Amdts. 1907, p. 99, Kerr's Stats. and Amdts. 1906-7, p. 413. **In effect** immediately.

§ 465a. **WHAT MOTIVE POWER MAY BE USED. AUTHORITY MUST BE OBTAINED.** Every person or corporation now or hereafter authorized to operate a railroad by steam motive power, is also authorized to use electricity - compressed air, or both, either with or without such steam, for the purpose of propelling cars or trains on such railroad or upon any portion thereof. In incorporated cities, towns, or cities and counties having more than five thousand inhabitants, authority must be obtained from the legislative authority thereof.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 368, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 574.

A codification of § 1 Act March 23, 1893, Stats. and Amdts. 1893, p. 208.

§ 466. **MAP AND PROFILE TO BE FILED.** Every railroad corporation in this state must, within a reasonable time after its road is finally located, cause to be made a map and profile thereof, and of the land acquired for the use thereof, and the boundaries of the several counties through which the road may run, and file the same in the

office of the secretary of state; and also like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which such parts of the road are, there to remain of record forever.

The maps and profiles must be certified by the chief engineer, the acting president and secretary of such company, and copies of the same, so certified and filed, be kept in the office of the secretary of the corporation, subject to examination by all parties interested.

History: Enacted March 21, 1872, founded upon § 43 Act May 20, 1861, Stats. 1861, pp. 623-624.

§ 467. **MAY CHANGE LINE OF ROAD.** If, at any time after the location of the line of the railroad and the filing of the maps and profiles thereof, as provided in the preceding section, it appears that the location can be improved, the directors may, as provided in subdivision seven, section four hundred and sixty-five, alter or change the same, and cause new maps and profiles to be filed, showing such changes, in the same offices where the originals are of file, and may proceed, in the same manner as the original location was acquired, to acquire and take possession of such new line, and must sell or relinquish the lands owned by them for the original location, within five years after such change.

[How new location to be run.] No new location, as herein provided, must be so run as to avoid any points named in their articles of incorporation.

History: Enacted March 21, 1872, founded upon § 18 Act May 20, 1861, Stats. 1861, p. 616.

§ 468. **FORFEITURE OF FRANCHISE. [FAILURE TO OPERATE, REVERTER.]** Every railroad corporation must, within two years after filing its original articles of incorporation, begin the construction of its road, and must every year thereafter complete and put in full operation at

least five miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited.

[When completed must be operated—Forfeiture of right to operate.] After the completion of any railroad, or any part thereof, capable of being operated, its owner must operate it, and upon his failure to keep it, or any part thereof, in full operation for the period of six months, his right to operate it in whole or in part, as the case may be, is forfeited, and the lands occupied for the purposes of the road, so far as the same is not operated, revert to the original owners or their successors in interest. A railroad is in full operation when one passenger train, or one mixed train, is run over it once a day in each direction and a sufficient number of freight trains to accommodate the traffic on the road. If a railroad is wholly constructed at an elevation of five thousand feet or more above the level of the sea, its owner is not required to maintain and operate it, nor to run passenger or other trains thereon, between the fifteenth of October of any year and the fifteenth of May of the year following.

[Exception.] This section must not be construed to require the operation of a road when prevented by the act of God, nor when the operation of the road, together with its branch and trunk lines, does not yield income sufficient to defray the expenses of maintaining and operating it in connection with its branch and trunk lines. The railroad commissioners have the power to examine and determine whether a railroad, together with its branch and trunk lines, yields income sufficient to operate the same.

History: Enacted March 21, 1872, founded upon § 54 Act May 20, 1861, Stats. 1861, p. 626, as amended Act April 1, 1870, Stats. 1869-70, p. 578; amended by Code Commission, Act March 21, 1901, Stats. and Amdts. 1900-1, p. 368, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 574.

§ 469. CROSSINGS AND INTERSECTIONS. CONDEMNATION. Whenever the track of one railroad intersects or crosses the track of another railroad, whether the same be a street railroad, wholly within the limits of a city or town, or other railroad, the rails of either or each road must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and, in case the persons or corporations owning the railroads cannot agree as to the compensation to be made for cutting and adjusting the rails, the condemnation of the right of way over the one for the use of the other road may be had in proceedings under title seven, part three, Code of Civil Procedure, and the damages assessed and the right of way granted as in other cases.

History: Enacted March 21, 1872, founded upon § 2 Act May 6, 1862, Stats. 1862, p. 498.

§ 470. NOT TO USE STREETS, ALLEYS, OR WATER, IN CITIES OR TOWNS, EXCEPT BY A TWO-THIRD[S] VOTE OF THE CITY OR TOWN AUTHORITIES. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-third[s] vote of the town or city authority from which the right must emanate.

History: Enacted March 21, 1872.

§ 471. CONVEYANCE OF PASSENGERS WITHIN CITY LIMITS [repealed].

History: Enacted March 21, 1872, founded upon § 21 Act 1861, Stats. 1861, p. 618; amended April 1, 1876, Code Amdts. 1875-6, p. 76; repealed April 1, 1878, Code Amdts. 1877-8, p. 84.

§ 472. WHEN CROSSING RAILROADS OR HIGHWAYS, HOW OTHER LANDS ARE ACQUIRED. Whenever the track of such railroad crosses a railroad or high-

way, such railroad or highway may be carried under, over, or on a level with the track, as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional lands and material as are necessary for the construction of such road or highway on such new line. If such other necessary lands cannot be had otherwise, they may be condemned as provided in title seven, part three, Code of Civil Procedure; and when compensation is made therefor, the same becomes the property of the corporation.

History: Enacted March 21, 1872, founded upon § 19 Act May 20, 1861, Stats. 1861, pp. 616-617.

§ 473. **CONSOLIDATION OF RAILROAD CORPORATION. PROCEEDINGS NECESSARY THERETO.** Any railroad corporation incorporated under the laws of this state may consolidate with one or more railroad corporations incorporated under the laws of this state, or under the laws of any other state or territory of the United States, its capital stock, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description, upon such terms and in such manner as may be agreed upon by their respective boards or directors; provided,

No such consolidation shall take effect until the same shall have been ratified and confirmed in writing by stockholders of the respective corporations representing three-fourths of the subscribed capital stock of their respective corporations. In case of such consolidation

"Articles of incorporation and consolidation" must be prepared, setting forth:

1. The name of the new corporation;

2. The purpose for which it is formed;

3. The place where its principal business is to be transacted;

4. The term for which it is to exist, which shall not exceed fifty years;

5. The number of its directors (which shall not be less than five, nor more than thirteen) and the names and residences of the persons appointed to act as such until their successors are elected and qualified;

6. The amount of its capital stock (which shall not exceed the amount actually required for the purposes of the new corporation, as estimated by competent engineers), and the number of shares into which it is divided;

7. The amount of stock actually subscribed, and by whom;

8. The termini of its road or roads and branches;

9. The estimated length of its road or roads and branches;

10. The names of the constituent corporations, and the terms and conditions of consolidation in full.

[Signing articles; method of—Memorandum of ratification.] Said articles of incorporation and consolidation must be signed and countersigned by the presidents and secretaries of the several constituent corporations and sealed with their corporate seals. There must be annexed thereto memoranda of the ratification and confirmation thereof by the stockholders of each constituent corporation, which must be respectively signed by stockholders representing at least three-fourths of the capital stock of their respective corporations. When completed as aforesaid said

Articles must be filed in the office of the county clerk of the county in which the original articles of incorporation of either of the consolidating corporations are filed, and a copy of the articles of incorporation and consolidation certified by such county clerk must be filed in the office of the secretary of state, and thereupon the constituent corporations named therein must be deemed and held to have become extinct in all courts and places, and said new corporation must be deemed and held in all courts and places to have succeeded to all their several capital stocks, properties, roads, equipments, adjuncts, franchises, claims, demands,

contracts, agreements, assets, choses and rights in action of every kind and description, both at law and in equity, and to be entitled to possess, enjoy, and enforce the same and every thereof, as fully and completely as either and every of its constituents might have done had no consolidation taken place.

[New corporation subrogated to constituents.] Said consolidated or new corporation must also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations, and liabilities, of every kind and nature, to any persons, corporations, or bodies politic, whomsoever, or whatsoever, and said new corporation must sue and be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued at law or in equity had no such consolidation been made. Nothing in this section contained shall be construed to impair the obligation of any contract to which any of such constituents were parties at the date of such consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation, and satisfaction obtained out of the property which, at the date of the consolidation, belonged to the constituent which was a party to the contract in action or suit, as well as out of any other property belonging to the consolidated corporation.

History: Enacted March 21, 1872, founded upon § 40 Act May 20, 1861, Stats. 1861, pp. 622-623; amended March 16, 1901, became a law, under constitutional provision, without Governor's approval, Stats. and Amdts. 1900-1, p. 327. **In effect** March 16, 1901.

§ 473a. RIGHT TO LEASE OR USE ANOTHER ROAD IN COMMON. Railroad corporations doing business in this state and organized under any law of this state

or the United States, or of any state or territory thereof, have power to enter into contracts with one another, whereby the one may lease of the other the whole or any part of its railroad, or may acquire of the other the right to use, in common with it, the whole or any part of its railroad.

History: Added by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 369; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 575.

A codification of § 2 Act April 2, 1880, Stats. 1880, p. 21.

§ 474. **STATE LANDS GRANTED FOR USE OF CORPORATIONS.** There is granted to every railroad corporation the right of way for the location, construction, and maintenance of their necessary works, and for every necessary adjunct thereto, over any swamp, overflowed, or other public lands of the state not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of such works and adjuncts, or for the protection thereof, not in any case to exceed two hundred feet in width.

History: Enacted March 21, 1872; this and following sections of chapter founded upon §§ 20-22 Act May 20, 1861, Stats. 1861, p. 617.

§ 475. **GRANT NOT TO EMBRACE TOWN LOTS.** The grants mentioned in the preceding section do not apply to public lands of the state within the corporate limits of towns and cities, or within three miles thereof.

History: Enacted March 21, 1872; this, the preceding section, and following sections of chapter founded upon §§ 20-22 Act May 20, 1861, Stats. 1861, p. 617.

§ 476. **WOOD, STONE, AND EARTH MAY BE TAKEN FROM STATE LANDS.** The right to take from any of the lands belonging to the state, adjacent to the works of the corporation, all materials, such as wood, stone, and

earth, naturally appurtenant thereto, which may be necessary and convenient for the original construction of its works and adjuncts, is granted to such corporations.

History: Enacted March 21, 1872; this and following sections of chapter founded upon §§ 20-22 Act May 20, 1861, Stats. 1861, p. 617.

§477. **LANDS TO REVERT TO STATE, WHEN.** If any corporation receiving state lands or appurtenances thereunder is dissolved, ceases to exist, is discontinued, or the route or line of its works is so changed as not to cover or cross the lands selected, or the use of the lands selected is abandoned, such selected lands revert, and the title thereto is reinvested in the state or its grantees, free from all such uses.

History: Enacted March 21, 1872; this and following section of chapter founded upon §§ 20-22 Act May 20, 1861, Stats. 1861, p. 617.

§478. **SELECTIONS MADE, HOW PROVED AND CERTIFIED TO.** When any selection of the right of way, or land for an adjunct to the works of a railroad corporation, is made by any corporation, the secretary thereof must transmit to the surveyor-general, controller of state, and recorder of the county in which the selected lands are situate, a plat of the lands so selected, giving the extent thereof and uses for which the same is claimed or desired, duly verified to be correct; and, if approved, the surveyor-general must so indorse the plat, and issue to the corporation a permit to use the same, unless, on petition properly presented to the court, a review is had and such use prohibited.

History: Enacted March 21, 1872; this and preceding four sections founded on § 20-22 Act May 20, 1861, Stats. 1861, p. 617.

CHAPTER III.

BUSINESS, HOW CONDUCTED.

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§ 479. CHECKS TO BE AFFIXED TO ALL BAGGAGE. [DAMAGES.] A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an

action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation.

History: Enacted March 21, 1872, founded upon § 42 Act May 20, 1861, Stats. 1861, p. 623.

§ 480. ANNUAL REPORT TO BE VERIFIED. FORM OF REPORT. Every railroad corporation must make an annual report to the secretary of state, or other officer designated by law, of its operations for each year, ending on the thirty-first day of December, verified by the oaths of the president or acting superintendent of operations, the secretary and treasurer of such corporation, and file it in the office of the secretary of state, or such other designated officer, by the twentieth day of February, which must state:

1. The capital stock, and the amount thereof actually paid in;

2. The amount expended for the purchase of lands for the construction of the road, for buildings, and for engines and cars, respectively;

3. The amount and nature of its indebtedness, and the amount due the corporation;

4. The amount received from the transportation of passengers, property, mails, and express matter, and from other sources;

5. The amount of freight, specifying the quantity in tons;

6. The amount paid for repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running such road;

7. The number and amount of dividends, and when paid;
8. The number of engine-houses and shops, of engines and cars, and their character.

History: Enacted March 21, 1872, founded upon § 44 Act May 20, 1861, Stats. 1861, p. 624.

§ 481. DUTIES OF CORPORATION. [TIME OF RUNNING TO BE FIXED BY PUBLIC NOTICE. SUFFICIENT ACCOMMODATIONS TO BE FURNISHED.]

Every such corporation must start and run its cars, for the transportation of persons and property, at such regular times as it shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or are offered for transportation, at the place of starting, at the junction of other railroads, and at siding and stopping-places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or tare therefor.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 369, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 575.

Section founded upon Act May 20, 1861, § 45 (Stats. 1861, p. 625). The language of the section as it now stands amended is almost a verbatim copy of that section of the Act of 1861 which is construed in Contra Costa C. M. R. Co. vs. Moss, 23 Cal. 323, 328.

North Carolina statute (N. C. Code § 1963) is almost word for word the same as this section, and is construed in Purcell vs. Richmond & D. R. Co., 108 N. C. 414, 12 S. E. Rep. 954, 12 L. R. A. 113.

Oklahoma statute (§ 1036) is identical with this section, and is construed in Chaddick vs. Lindsay, 5 Okla. 616, 49 Pac. Rep. 940.

§ 482. CORPORATION TO PAY DAMAGES FOR REFUSAL. In case of refusal by such corporation or their agents so to take and transport any passengers or property, or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

History: Enacted March 21, 1872, founded upon § 46 Act May 20, 1861, Stats. 1861, p. 624.

§ 483. FURNISH ROOM INSIDE PASSENGER-CARS, AND BE RESPONSIBLE FOR DAMAGES OCCURRING ON FREIGHT AND OTHER CARS. Every railroad corporation must furnish, on the inside of the passenger-cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger-cars.

History: Enacted March 21, 1872, founded upon §§ 45, 46 Act May 20, 1861, Stats. 1861, p. 624.

§ 484. CORPORATIONS TO POST PRINTED REGULATIONS, AND NOT RESPONSIBLE FOR DAMAGES IN VIOLATION OF RULES. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger-cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not respon-

sible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

History: Enacted March 21, 1872, founded upon § 48 Act May 20, 1861, Stats. 1861, p. 625.

§ 485. MAINTENANCE OF FENCES ALONG RAILROAD. TO PAY DAMAGES. NOT LIABLE IN CERTAIN CASES. CORPORATION MAY RECOVER DAMAGES, WHEN. Railroad corporations must make and maintain a good and sufficient fence on both sides of their track and property. In case they do not make and maintain such fence, if their engine or cars shall kill or maim any cattle or the same runs through or upon public land they must pay to the owner of such cattle or other domestic animals a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed. Railroad corporations paying to the owner of the land through or along which their road is located an agreed price for making and maintaining such fence, or paying the cost of such fence with the award of damages allowed for the right of way for such railroad, are relieved and exonerated from all claims for damages arising out of the killing or maiming any animals of persons who thus fail to construct and maintain such fence; and the owners of such animals are responsible for any damages or loss which may accrue to such corporation from such animals being upon their railroad track, resulting from the non-construction of such fence, unless it is shown that such loss or damage occurred through the negligence or fault of the corporation, its officers, agents, or employees.

History: Enacted March 21, 1872, founded upon § 40 Act May 20, 1861, Stats. 1861, p. 623; amended June 7, 1915, Stats. and Amdts. 1915, p. 1281. **In effect** August 8, 1915.

§ 485a. RIGHT TO PRIVATE CROSSINGS OVER RAILROAD TRACKS. The owner or owners of any lands along or through which any railroad is constructed or main-

tained, shall have the right to such farm or private crossings over such railroad and railroad right of way as may be reasonably necessary or convenient for ingress to or egress from such lands, or in order to connect such lands with other adjacent lands of such owner or owners; and the owner or operator of such railroad shall construct and at all times maintain such farm or private crossing in a good, safe and passable condition; provided, that the railroad commission shall have the authority to determine the necessity for such crossing and the place, manner and conditions under which said crossing shall be constructed and maintained, and shall fix and assess the cost and expense thereof.

History: Enactment approved May 29, 1915, Stats. and Amdts. 1915, p. 920. **In effect** August 8, 1915.

§ 486. **REGULATIONS OF TRAINS. PENALTY.** A bell, of at least twenty pounds weight, must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed such street, road, or highway; or a steam whistle must be attached, and be sounded, except in cities, at the like distance, and be kept sounding at intervals until it has crossed the same, under a penalty of one hundred dollars for every neglect, to be paid by the corporation operating the railroad, which may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the state.

[Liability in damages.] The corporation is also liable for all damages sustained by any person, and caused by its locomotives, train, or cars, when the provisions of this section are not complied with.

History: Enacted March 21, 1872, founded upon § 41 Act May 20, 1861, Stats. 1861, p. 623.

§ 487. **PASSENGER REFUSING TO PAY FARE.** If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employees of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling-house, on stopping the train.

History: Enacted March 21, 1872, founded upon § 49 Act May 20, 1861, Stats. 1861, p. 625.

§ 488. **OFFICERS TO WEAR BADGE.** Every conductor, baggage-master, engineer, brakeman, or other employee of any railroad corporation, employed on a passenger-train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge, indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employee, without such badge, has any authority to meddle or interfere with any passenger or property.

History: Enacted March 21, 1872, founded upon § 50 Act May 20, 1861, Stats. 1861, p. 625.

§ 489. **RATE OF CHARGES ESTABLISHED BY RAILROAD COMMISSIONERS. NOTICE SERVED.** Whenever the board of railroad commissioners, in the discharge of its duties, establishes or adopts rates of charges for the transportation of passengers and freight, pursuant to the provisions of the constitution, said board must serve a printed schedule of such rates, and of any changes that may be made in such rates, upon the person, copartnership, company, or corporation affected thereby; and

[Copies of rates to be posted, where and by whom.] Upon such service it is the duty of such person, copartnership, company, or corporation to immediately cause copies of the same to be posted in all its offices, station-houses, warehouses, and landing offices affected by such rates, or change of rates, in such manner as to be accessible to public inspection during usual business hours.

Said board [of railroad commissioners] must also make such further publication thereof as it deems proper and necessary for the public good. If the party to be served is a corporation, such service may be made upon the president, vice-president, secretary, or managing agent thereof, and if a copartnership, upon any partner thereof.

[Rates go into effect, when.] The rates of charges established or adopted by said board, pursuant to the constitution and the laws of this state, must go into force and effect on the twentieth day after service of such schedule of rates, or changes in rates, upon the person, copartnership, company, or corporation affected thereby.

History: Enacted March 21, 1872, founded upon § 51 Act May 20, 1861, Stats. 1861, p. 625; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 370, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, p. 575.

§ 490. RAILROAD TICKETS ENTITLE PURCHASER TO WHAT. PENALTY FOR FAILURE TO PROVIDE SUCH TICKETS. Every railroad corporation must provide, and on being tendered the fare therefor fixed, as provided in the preceding section, furnish to every person desiring a passage on their passenger-cars a ticket, which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger-cars to the station or depot of destination,

or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused all actual damages caused thereby, with reasonable counsel fees expended in recovering same.

History: Enacted March 21, 1872; amended March 23, 1901, Stats. and Amdts. 1900-1, p. 600.

§ 491. **QUALITY OF RAIL TO BE USED.** All railroads, other than street railroads and those used exclusively for carrying freight or for mining purposes, built by corporations organized under this chapter, must be constructed of the best quality of iron or steel rail, known as T or H rail, or other pattern of equal utility.

History: Enacted March 21, 1872, founded upon § 57 Act May 20, 1861, Stats. 1861, p. 627; amended March 30, 1874, Code Amdts. 1873-4, p. 212.

§ 492. **ELEVATED OR UNDERGROUND RAILROADS. WHO MAY GRANT FRANCHISE.** The legislative or other body to whom is intrusted the government of the county, city and county, city, or town, under such regulations, restrictions, and limitations, and upon such terms and payment of license tax as the county, city and county, city, or town authority may provide, may grant franchises for the construction of elevated or underground railroad tracks over, across, or under the streets and public highways of any such county, city and county, city, or town, for the term not exceeding fifty years;

[Petition—By whom signed.] Provided, that before granting such franchise there shall be presented to such legisla-

tive or other body a petition signed by the owners of a majority of the landed property, other than public property, on the line of said elevated portion applied for.

History: Enacted March 27, 1895, Stats. and Amdts. 1895, p. 241; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 370, held unconstitutional, see history, § 4 ante.

§ 493. **TO WHAT ABOVE SECTION APPLIES.** The provisions of section four hundred and ninety-two shall apply to any railway corporation heretofore or hereafter incorporated.

History: Enacted March 27, 1895, Stats. and Amdts. 1895, p. 242; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 370, held unconstitutional, see history, § 4 ante; amended March 21, 1905, Stats. and Amdts. 1905, p. 576.

§ 494. **RAILROAD CORPORATIONS MAY SELL PROPERTY AND FRANCHISES TO OTHER RAILROADS.** Any railroad corporation, person or persons, firm or corporation, owning any railroad in this state, may sell, convey, and transfer its property and franchises, or any part thereof, to any other railroad corporation, whether organized under the laws of this state or of any other state or territory, or under any act of congress; and any other such railroad corporation receiving such conveyance may hold and operate such railroad franchises and property within this state, build and operate extensions and branches thereof, and thereunto exercise the right of eminent domain, and do any other business in connection therewith, as fully and effectually to all intents and purposes as if such corporation were organized under the laws of this state;

[Terms and conditions of sale.] Provided, that before such sale, conveyance, or transfer shall become operative, an agreement in writing must be executed by the parties thereto, containing the terms and conditions of the purchase and

sale, and its execution must be authorized by the board of directors and ratified by three fourths of the stockholders of each of the railroad companies that are parties to such conveyance and transfer, and said agreement or conveyance shall be recorded in each county through which said road or roads pass in this state; and

[Not relieved from debts incurred.] Provided further, that no sale, conveyances, or transfer under this act shall relieve the franchise or property sold, conveyed, or transferred, from the liability of the grantor contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges;

[Competing roads shall not be purchased.] Provided, that this section shall not authorize any corporation to purchase any railroad property operated in competition with it;

[Fares and toll shall not be increased. When lowered cannnot be raised.] And provided further, that any or all established rates for fares and tolls for carrying passengers or freight between any points upon any railroad purchased under the provisions of this act, shall not be increased without the consent of the governmental authority in which is vested by law the power to regulate fares and freights; and provided further, that whenever a railroad corporation, which has purchased any line of road under this act, shall for the purposes of competing with any other common carrier lower its rates for transportation of passengers or freight from one point to another upon such line purchased, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights; and

[Penalty for violation—Duty of attorney-general.] Provided further, that for every violation of the provisions of this act on the part of directors or governing officers of said corporation, the state shall be entitled to recover from such offending railroad company the sum of ten thousand dollars. It is hereby declared to be the duty of the attorney-general

of the state, in the event of any such violation, to demand and collect from such company the said penalty; and he is hereby authorized and empowered to prosecute all the necessary actions in the name of the people of the state of California against such company in the courts of the state. All money so collected shall be paid into the general fund of this state.

History: Enacted Feb. 27, 1903, Stats. and Amdts. 1903, p. 50.

Prior legislation covering the same ground, with same number to section, in almost the same language, was enacted March 22, 1899; the latter enactment made no reference to the former; to remedy this anomalous condition the last session of the legislature passed an act repealing the former of these two sections 494 in the following terms: "Section four hundred and ninety-four of the Civil Code, as approved March 22, 1899, is hereby repealed; provided, that nothing in this act contained shall be deemed to repeal any of the provisions of section 494 of said code as approved Februry 27, 1903." See Stats. and Amdts. 1905, p. 576.

TITLE IV.

STREET RAILROAD CORPORATIONS.

§ 497. Railway tracks. How authority is obtained to lay. Propelling power. Limitations and restrictions.
§ 498. Limitations and restrictions. Manner of laying tracks.
§ 499. Two lines street railway may use same track.
§ 499[a]. City trustees may permit two lines of street railway may use same track.
§ 500. Crossing tracks. Obstruction.
§ 501. Rates of fare on street-cars. [Manner of construction of street-cars.] Penalty.
§ 502. Time allowed for commencing and completing work. Penalty. Extension of time.
§ 503. May make further regulations and rules.
§ 504. Penalty for overcharging.
§ 505. Street railroads must furnish tickets. Penalty.
§ 506. Proof of agency.
§ 507. Reserved rights.
§ 508. License to be paid to city or town.
§ 509. Track for grading purposes. [Time may remain.]
§ 510. Law governing street railroads.
§ 511. Title applicable to natural persons alike with corporations.

§ 497. RAILWAY TRACKS. HOW AUTHORITY IS OBTAINED TO LAY. PROPELLING POWER. LIMITATIONS AND RESTRICTIONS. Authority to lay railroad tracks through the streets and public highways of any incorporated city, city and county, or town, may be obtained for a term of years not exceeding fifty, from the trustees, council, or other body to whom is intrusted the government of the city, city and county, or town, under such restrictions and limitations, and upon such terms and payment of license tax, as the city, city and county, or town authority may provide.

[Motive power.] In no case must permission be granted to propel cars upon such tracks otherwise than by electric-

ity, horses, mules, or by wire ropes running under the streets and moved by stationary engines, unless for special reasons in this title hereinafter mentioned; provided, however, that such board or body in granting the right, or at any time after the same is granted, to use electricity or any other of said modes, shall have power to impose such terms, restrictions, and limitations as to the use of streets and the construction and mode of operating such electric and other roads as may, by such board or body, be deemed for the public safety or welfare.

History: Enacted March 21, 1872, founded upon § 1 Act March 29, 1870, Stats. 1869-70, p. 481; amended March 3, 1876, Code Amdts. 1875-6, p. 76; Feb. 25, 1891, Stats. and Amdts. 1891, p. 12; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 370, held unconstitutional, see history, § 4 ante.

§ 498. **LIMITATIONS AND RESTRICTIONS. MANNER OF LAYING TRACKS.** The city or town authorities, in granting the right of way to street-railroad corporations, in addition to the restrictions which they are authorized to impose, must require a strict compliance with the following conditions, except in the cases of prismoidal or other elevated railways. In such cases, said railway shall be required to be constructed in such a manner as will present the least obstruction to the freedom of the streets on which it may be erected, when allowed by the granting power:

1. To construct their tracks on those portions of streets designated in the ordinance granting the right, which must be as nearly as possible in the middle thereof.

2. To plank, pave, or macadamize the entire length of the street, used by their track, between the rails, and for two feet on each side thereof, and between the tracks, if there be more than one, and to keep the same constantly in repair, flush with the street, and with good crossings.

3. That the tracks must not be more than five feet wide within the rails, and must have a space between them sufficient to allow the cars to pass each other freely.

History: Enacted March 21, 1872; amended March 30, 1874. Code Amdts. 1873-4, p. 212; April 3, 1876, Code Amdts. 1875-6, p. 77; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 371, held unconstitutional, see history, § 4 ante.

Prismoidal railway.—The exception as to "prismoidal and other elevated railways" was introduced by the amendment of 1876. A "prismoidal railway" is one having a prism-shaped single continuous rail, beam, or truss supported on posts or columns. The motor and cars run astride the beam, the motor being provided with grip-wheels to obtain the hold on the track requisite for draft. This is a species of single-rail type of railway, an improvement on the Djiboniti-monorail conceived and put in operation by M. Lartigue a century ago. There are several different systems or modifications of this railway. In the Cook System, the Barmen roads, and the Romanoff System in Russia, the motor and carriage are suspended in the air, running on an inverted rail. The idea has been most highly developed and perfected in the United States, in what is known as the Cook System, with the Behr System in England a close second. The latter system has been in operation in Ballyhunnion, Ireland, for several years, and a road of this kind has recently been completed from Manchester to Liverpool—a distance of thirty-four miles—on which the regular running time is twenty minutes,—just one half the time of the swiftest train on the two-rail road. The improved monorail seems to have solved the problem of rapid, safe, and cheap transportation. But neither the Tunis road nor the Behr System is, properly speaking, an elevated road, but a surface railway. In each the motors and cars are mounted on two-wheel trucks geared tandem fashion, running on a rail strung along the ground, with an inverted rail overhead.

§ 499. **TWO LINES OF STREET RAILWAY MAY USE SAME TRACK.** The legislative body of any incorporated city, city and county, or town, may permit two or more lines of street railway to use the same portion of the same street or the same tracks upon such terms as may be

agreed upon by the companies operating such railways; but no permission shall be granted to one company to use the same tracks or portion of the same street for a distance of more than five consecutive blocks without the consent of the company occupying said portion of the street and then only upon payment of an equal portion of the cost of construction of the tracks and appurtenances used by such railways jointly;

[City may use.] Provided, that any incorporated city, city and county, or town may own and operate street railways within or without the municipal limits, and may occupy the same street or tracks occupied or used by any street railway company within its limits upon payment to such company of an equal portion of the estimated cost of construction, at the time of such occupation, of the tracks or appurtenances to be used jointly by said company and said city, city and county, or town.

[Tracks of different gauge.] Where such portion of such street shall be occupied by a track or tracks of a different gauge from the track or tracks proposed to be constructed thereon by a line of street railway under a different management, such last-mentioned line of street railway may nevertheless construct its track or tracks, subject to the limitation before prescribed, over the same ground as may be occupied by such prior track or tracks; provided, the same can be so constructed as not to interfere with the operation of such prior track or tracks beyond such necessary interference therewith as shall be incident to such construction with reasonable skill, care and diligence.

History: Enacted March 21, 1872; amended February 25, 1891, Stats. and Amdts. 1891, p. 13; March 21, 1907, Stats. and Amdts. 1907, p. 837, Kerr's Stats. and Amdts. 1906-7, p. 415; February 15, 1911, p. 60.

This section was again amended on April 24, 1911, which amendment is given below as § 499[a].

§ 499[a]. CITY TRUSTEES MAY PERMIT TWO LINES OF STREET RAILWAY MAY USE SAME TRACK. The legislative body of any incorporated city, city and county, or town, may permit two or more lines of street railway to use the same portion of the same street or the same tracks upon such terms as may be agreed upon by the companies operating such railways; but no permission shall be granted to one company to use the same tracks or portions of the same street for a distance of more than five consecutive blocks without the consent of the person or company occupying said portion of the street and then only upon payment of an equal portion of the cost of construction of the tracks and appurtenances used by such railways jointly; provided, that any incorporated city, city and county, or town may own and operate street railways within or without the municipal limits, and may occupy the same street or tracks occupied or used by any street railway within its limits for any number of blocks upon payment to the owner thereof of an equal portion of the estimated cost of construction, at the time of such occupation, of such tracks or appurtenances as such city, city and county, or town may elect to use jointly with said street railway. Where such portion of such street shall be occupied by a track or tracks of a different gauge from the track or tracks proposed to be constructed thereon by a line of street railway under a different management, such last-mentioned line of street railway may nevertheless construct its track or tracks, subject to the limitation before prescribed, over the same ground as may be occupied by such prior track or tracks; provided the same can be so constructed as not to interfere with the operation of such prior track or tracks beyond such necessary interference therewith as shall be incident to such construction with reasonable skill, care and diligence.

History: Enacted March 21, 1872; amended February 25, 1891, Stats. and Amdts. 1891, p. 13; March 21, 1907, Stats. and Amdts. 1907, p. 837, Kerr's Stats. and Amdts. 1906-7, p. 415; February 15 and April 24, 1911, pp. 60, 1101.

§ 500. **CROSSING TRACKS. OBSTRUCTIONS.** Any proposed railroad track may be permitted to cross any track already constructed, the crossing being made as provided in chapter two, title three, of this part. In laying down the track and preparing therefor, not more than one block must be obstructed at any one time, nor for a longer period than ten working days.

History: Enacted March 21, 1872.

§ 501. **RATES OF FARE ON STREET CARS. [MANNER OF CONSTRUCTION OF STREET CARS.] PENALTY.** The rates of fare on the cars must not exceed ten cents for one fare for any distance under three miles, and in municipal corporations of the first class must not exceed five cents for each passenger per trip of any distance in one direction either going or coming, along any part of the whole length of the road or its connections. The cars must be of the most approved construction for the comfort and convenience of passengers, and provided with brakes to stop the same, when required.

[Fine for violation.] A violation of the provisions of this section subjects the corporation to a fine of one hundred dollars for each offense.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 371, held unconstitutional, see history, § 4 ante; amendment re-enacted March 16, 1903, Stats. and Amdts. 1903, pp. 172-173.

§ 502. **TIME ALLOWED FOR COMMENCING AND COMPLETING WORK. PENALTY. EXTENSION OF TIME.** Work to construct the railroad must be commenced in good faith within not more than one year from the date of the taking effect of the ordinance granting the right of way, and said work must be completed within not more than three years after the taking effect of such ordinance; provided, that the governing body of such municipal corpora-

tion at the time of granting said right of way shall have the power to fix the time for either the commencing or completion, or both, of said work; not, however, to a time less than six months for commencing, and not less than eighteen months for completing the same.

[Failure to comply—Forfeiture.] A failure to comply with either of the foregoing provisions of this section, or with either of the provisions of the ordinance granting said right of way, works a forfeiture of the right of way, and also of the franchise, unless the uncompleted portion is abandoned by the person or corporation to whom said right of way is granted, with the consent of the authorities granting the right of way, such abandonment and consent to be in writing.

[Extension—Who may grant—When and for what term.] The authority granting the right of way shall have the power to grant an extension of time for the completion of said work, if it appear that the work has been commenced within the time fixed, and prosecuted in good faith; but no extension of time shall be granted for the commencement of said work, and shall not be granted for more than one year for the completion of the same. All extensions of time shall be in writing, and made a matter of record in the municipality. Provided further, that this act shall not in any way affect any franchise or right of way granted before its passage.

History: Enacted March 21, 1872; amended Feb. 25, 1895, Stats. and Amdts. 1895, p. 17. **In effect** Feb. 25, 1895.

§ 503. MAY MAKE FURTHER REGULATIONS AND RULES. Cities and towns in or through which street-railroads run may make such further regulations for the government of such street-railroads as may be necessary to a full enjoyment of the franchise and the enforcement of the conditions provided herein.

History: Enacted March 21, 1872, founded upon § 10 Act March 29, 1870, Stats. 1869-70, p. 483.

§ 504. **PENALTY FOR OVERCHARGING.** Any corporation, or agent or employee thereof, demanding or charging a greater sum of money for fare on the cars of such street railroad than that fixed, as provided in this title, forfeits to the person from whom such sum is received, or who is thus overcharged, the sum of two hundred dollars, to be recovered in a civil action, in any justice's court having jurisdiction thereof, against the corporation.

History: Enacted March 21, 1872, founded upon § 1 Act April 14, 1863, Stats. 1863, p. 296; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 371, held unconstitutional, see history, § 4 ante.

§ 505. **STREET RAILROADS MUST FURNISH TICKETS. PENALTY.** Every street-railroad corporation must provide, and, on request, furnish to all persons desiring a passage on its cars, any required quantity of passenger tickets or checks, each to be good for one ride.

[Penalty for failure to comply.] Any corporation failing to provide and furnish tickets or checks to any person desiring to purchase the same at not exceeding the rate hereinbefore described, shall forfeit to such person the sum of two hundred dollars, to be recovered as provided in the preceding section; provided, that the provisions of this section shall not apply to such street-railroad corporations as charge but five cents fare.

History: Enacted March 21, 1872, founded upon § 1 Act April 14, 1863, Stats. 1863, p. 297; amended March 30, 1874, Code Amdts. 1873-4, p. 213; March 13, 1883, Stats. and Amdts. 1883, p. 84. **In force** March 13, 1883.

§ 506. **PROOF OF AGENCY.** Upon the trial of an action for any of the sums forfeited, as provided in the two preceding sections, proof that the person demanding or receiving the money as fare, or for the sale of the ticket or check, was at the time of making the demand or receiving

the money, engaged in an office of the corporation, or vehicle belonging to the corporation, shall be prima facie evidence that such person was the agent, servant, or employee of the corporation, to receive the money, and give the ticket or check mentioned.

History: Enacted March 21, 1872, founded upon § 3 Act April 14, 1863, Stats. 1863, p. 297; amended March 30, 1874, Code Amdts. 1873-4, p. 213.

§ 507. **RESERVED RIGHTS.** In every grant to construct street railroads, the right to grade, sewer, pave, macadamize, or otherwise improve, alter, or repair the streets or highways, is reserved to the corporation, and cannot be alienated or impaired; such work to be done so as to obstruct the railroad as little as possible, and, if required, the corporation must shift its rails so as to avoid the obstructions made thereby.

History: Enacted March 21, 1872, founded upon § 9 Act 1870, Stats. 1869-70, p. 483; amended March 30, 1874, Code Amdts. 1873-4, p. 214; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 372, held unconstitutional, see history, § 4 ante.

§ 508. **LICENSE TO BE PAID TO CITY OR TOWN.** Each street-railroad corporation must pay to the authorities of the city, town, county, or city and county, as a license upon each car, such sum as the authorities may fix, not exceeding fifty dollars per annum in the city of San Francisco, nor more than twenty-five dollars per annum in other cities or towns. Where any street railroad connects or runs through two or more cities or towns, a proportionate or equal share of such license tax must be paid to each of the cities or towns; and no such license tax is due the county authorities where the same is paid to any city or town authority.

History: Enacted March 21, 1872, founded upon § 10 of Act March 29, 1870, Stats. 1869-70, p. 483.

§ 509. **TRACK FOR GRADING PURPOSES. [TIME MAY REMAIN.]** The right to lay down a track for grading purposes, and maintain the same for a period not to exceed three years, may be granted by the corporate authorities of any city or town, or city and county, or supervisors of any city or county, but no such track must remain more than three years upon any one street; and it must be laid level with the street, and must be operated under such restrictions as not to interfere with the use of the street by the public.

[Motive power.] The corporate authorities of any city or town, or city and county, may grant the right to use steam or any other motive power in propelling the cars used on such grading track, when public convenience or utility demands it, but the reasons therefor must be set forth in the ordinance, and the right to rescind the ordinance at any time reserved.

History: Enacted March 21, 1872, founded upon § 11 of Act March 29, 1870, Stats. 1869-70, p. 483.

§ 510. **LAW GOVERNING STREET RAILROADS.** Street railroads are governed by the provisions of title three of this part, so far as they are applicable, unless such railroads are therein specially excepted.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 214.

§ 511. **TITLE APPLICABLE TO NATURAL PERSONS ALIKE WITH CORPORATIONS.** When a street railroad is constructed, owned, or operated by any natural person, this title is applicable to such person in like manner as it is applicable to corporations.

History: Enacted March 21, 1872.

TITLE V.

WAGON ROAD CORPORATIONS.

§ 512. Three commissioners to act with surveyor.
§ 513. Survey and map to be filed and approved.
§ 514. Bridges or ferries on line. Tolls, limits of. Franchise forfeited, when.
§ 515. No tolls to be charged on highways or public roads.
§ 516. Rates of toll must be posted.
§ 517. Persons detained until toll is paid.
§ 518. Persons unnecessarily detained or overcharged, damages.
§ 519. Persons avoiding toll to pay five dollars.
§ 520. Penalties for trespasses on property of corporation.
§ 521. Revenue, how appropriated. [Reduction of tolls, when.]
§ 522. Property may be mortgaged or hypothecated.
§ 523. This title applies to natural persons as well as corporations.
§ 524. Franchises granted for construction of roads for use of horseless vehicles.

§ 512. THREE COMMISSIONERS TO ACT WITH SURVEYOR. Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows: Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of supervisors of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road, to the supervisors, as provided in the succeeding section.

History: Enacted March 21, 1872, founded on § 2 Act April 22, 1853, Stats. 1853, p. 114; amended March 30, 1874, Code Amdts. 1873-4, p. 214.

§ 513. SURVEY AND MAP TO BE FILED AND APPROVED. When the route is surveyed a map thereof must be submitted to and filed with the board of supervisors of

each county through or into which the road runs, giving its general course, and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the supervisors must either approve or reject the survey.

If approved, it must be entered of record on the journal of the board, and such approval authorizes the use of all public lands and highways over which the survey runs; but the board of supervisors must require the corporation, at its own expense, and the corporation must so change and open the highways so taken and used as to make the same as good as before the appropriation thereof; and must so construct all crossings of public highways over and by its road and toll-gates, as not to hinder or obstruct the use of the same.

History: Enacted March 21, 1872, founded on § 1 Act 1854, Stats. 1854, p. 74; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 372, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 577.

§ 514. BRIDGES OR FERRIES ON LINE. TOLLS, LIMIT OF. FRANCHISE FORFEITED, WHEN. All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries, or bridges, as are fixed by the board of supervisors of the proper county through which the road passes, or in which the ferry or bridge is situate.

[Amount of tolls permissible.] But in no case must the tolls be more than sufficient to pay fifteen per cent, nor less than ten per cent per annum, on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges, or ferries.

[Penalty for violation.] If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its

franchise, and must pay to the party so charged one hundred dollars as liquidated damages.

History: Enacted March 21, 1872, founded on § 1 Act 1857, Stats. 1857, p. 280; amended March 28, 1874, Code Amdts. 1873-4, p. 272; March 30, 1874, Code Amdts. 1873-4, pp. 214-215; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 372, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 577.

Note.—The act of March 30, 1874, covered the entire subject, and repealed, by implication, the amendment of March 28, 1874, although the amendment of March 28 is given as the law in former compilations, and no reference made to amendment of March 30.

§ 515. **NO TOLLS TO BE CHARGED ON HIGHWAYS OR PUBLIC ROADS.** When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a toll-gate on or take tolls for the use of such highway or public road by teamsters, travelers, drovers, or any one transporting property over the same.

History: Enacted March 21, 1872, founded upon § 3 Act April 22, 1853, p. 115.

§ 516. **RATES OF TOLL MUST BE POSTED.** The corporation must affix and keep up, at or over each gate, or in some conspicuous place, so as to be conveniently read, a printed list showing, first, the date when the franchise or privilege under which the right to collect tolls is claimed, was granted and the term of duration of said franchise; second, the date upon which rates of tolls were last fixed by the board of supervisors; and, third, the rates of tolls levied and demanded. Failure to comply with the provisions of this act shall work an immediate forfeiture of franchise.

History: Enacted March 21, 1872, founded upon § 30 Act May 12, 1853, Stats. 1853, p. 176; amended Feb. 14, 1901, Stats. and Amdts. 1900-1, p. 5. **In force** Feb. 14, 1901.

§ 517. **PERSONS DETAINED UNTIL TOLL IS PAID.** Each toll-gatherer may prevent from passing through his gate any person, animal, or vehicle, subject to toll, until the toll authorized to be collected for such passing has been paid.

History: Enacted March 17, 1872, founded on § 29 Act May 12, 1853, Stats. 1853, p. 176; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 372, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 577.

§ 518. **PERSONS UNNECESSARILY DETAINED OR OVERCHARGED, DAMAGES.** Every toll-gatherer who, at any gate, unreasonably hinders or delays any traveler or passenger or any vehicle or animal liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense forfeits the sum of twenty-five dollars to the person aggrieved.

History: Enacted March 21, 1872, founded upon § 31 Act May 12, 1853, Stats. 1853, p. 176; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 372, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 578.

§ 519. **PERSONS AVOIDING TOLLS TO PAY FIVE DOLLARS.** Every person who, to avoid the payment of the legal toll, with his team, vehicle, or horse, turns out of a wagon, turnpike, or plank road, or passes any gate thereon on ground adjacent thereto, and again enters upon such road, for each offense forfeits the sum of five dollars to the corporation injured.

History: Enacted March 21, 1872, founded upon § 33 Act May 12, 1853, Stats. 1853, p. 176.

§ 520. **PENALTIES FOR TRESPASSES ON PROPERTY OF CORPORATION.** Every person who:

1. Wilfully breaks, cuts down, defaces, or injures any milestone or post on any wagon, turnpike, or plank road; or,

2. Wilfully breaks or throws down any gate on such road; or,

3. Digs up or injures any part of such road or anything thereunto belonging; or,

4. Forcibly or fraudulently passes any gate thereon without having paid the legal toll;

For each offense forfeits to the corporation injured the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act.

History: Enacted March 21, 1872, founded on § 32 Act May 12, 1853, Stats. 1853, p. 176.

§ 521. REVENUE, HOW APPROPRIATED. [REDUCTION OF TOLLS, WHEN.] The entire revenue derived from the road shall be appropriated: first, to repayment to the corporation of the costs of its construction, together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and, second, to the payment of the dividend among its stockholders, as provided in section five hundred and fourteen. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay said dividend, and incidental expenses, and to keep the road in good repair.

History: Enacted March 21, 1872, founded on § 4 Act April 22, 1853, p. 115; amended March 30, 1874, Code Amdts. 1873-4, p. 215.

§ 522. PROPERTY MAY BE MORTGAGED OR HYPOTHECATED. The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair its road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances,

and then only after an affirmative vote of two-thirds of the capital stock subscribed.

History: Enacted March 21, 1872, founded on § 19 Act May 12 ,1853, Stats. 1853, p. 173; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 373, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 578.

§ 523. **THIS TITLE APPLIES TO NATURAL PERSONS AS WELL AS CORPORATIONS.** When a wagon, turnpike, or plank road is constructed, owned, or operated by any natural person this title is applicable to such person in like manner as it is applicable to corporations.

History: Enacted March 21, 1872.

§ 524. **FRANCHISES GRANTED FOR CONSTRUCTION OF ROADS FOR USE OF HORSELESS VEHICLES.** The legislative or other body to whom is intrusted the government of any county, city and county, city, or town, may, under such regulations, restrictions, and limitations as it may provide, subject to existing laws, grant franchises for the construction of paths and roads, either on the surface, elevated, or depressed, on, over, across, or under the streets and public highways of any such county, city, or town, for the use of bicycles, tricycles, motorcycles, and other like horseless vehicles, for a term not exceeding fifty years.

In incorporated cities no franchise must be granted for the purpose herein expressed, unless the consent in writing of the owners of a majority of the frontage upon the road or street along which said path or road is sought to be constructed, is first had and obtained, and filed with such legislative or governing body.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 373, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 578.

TITLE VI.

BRIDGES, FERRY, WHARF, CHUTE, AND PIER CORPORATIONS.

§ 528. Toll not to be collected without authority.
§ 529. Corporate existence ceases, when.
§ 530. President and secretary to make annual report to supervisors; what report must contain. Damages for failure to report.
§ 531. This title to apply to natural persons alike with corporations.

§ 528. TOLL NOT TO BE COLLECTED WITHOUT AUTHORITY. No corporation must construct, or take tolls on, a bridge, ferry, wharf, chute, or pier until authority is granted therefor by the supervisors, or other governing body having authority in that behalf.

History: Enacted March 21, 1872, founded upon § 1 Act April 8, 1858, Stats. 1858, p. 120, as amended by § 1 Act 1870, Stats. 1869-70, p. 526; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 373, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 579.

§ 529. CORPORATE EXISTENCE CEASES, WHEN. Every such corporation ceases to be a body corporate:

1. If, within six months from filing its articles of incorporation, it has not obtained such authority from the board of supervisors, or other governing body having authority in that behalf; and if, within one year thereafter, it has not commenced the construction of the bridge, wharf, chute, or pier, and actually expended thereon at least ten per cent of the capital stock of the corporation;

2. If, within three years from filing the articles of incorporation, the bridge, wharf, chute, or pier is not completed;

3. If, when the bridge, wharf, chute, or pier of the corporation is destroyed, it is not reconstructed and ready for use within three years thereafter;

4. If the ferry of any such corporation is not in running order within three months after authority is obtained to establish it, or if at any time thereafter it ceases for a like term consecutively to perform the duties imposed by law.

History: Enacted March 21, 1872, founded upon § 169 Act April 22, 1850, Stats. 1850, p. 373; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 373, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 579.

§ 530. PRESIDENT AND SECRETARY TO MAKE ANNUAL REPORT TO SUPERVISORS; WHAT REPORT TO CONTAIN. DAMAGES FOR FAILURE TO REPORT. The president and secretary of every bridge, ferry, wharf, chute, or pier corporation must annually, under oath, report to the board of supervisors, or other governing body having authority in that behalf, of the county in which the articles of incorporation are filed:

1. The cost of constructing and providing all necessary appendages and appurtenances for its bridge, ferry, wharf, chute, or pier;

2. The amount of all moneys expended thereon, since its construction, for repairs and incidental expenses;

3. The amount of its capital stock, how much paid in, and how much actually expended thereof;

4. The amount received during the year for tolls, and from all other sources, stating each separately;

5. The amount of dividends made, and the indebtedness of the corporation, specifying for what it was incurred;

6. Such other facts and particulars respecting the business of the corporation, as the board of supervisors or other governing body having authority in that behalf may require.

[Publication of report.] This report the president and secretary must cause to be published for four weeks in a

daily newspaper published nearest the bridge, ferry, wharf, pier, or chute, if required by order of the board of supervisors or other governing body having authority in that behalf. A failure to make such report subjects the corporation to a penalty of two hundred dollars, and for every week permitted to elapse after such failure an additional penalty of fifty dollars, payable in each case to the county from which the authority of the corporation was derived.

[Duty of district attorney or city attorney.] All such cases must be reported by the board of supervisors, or other governing body having authority in that behalf, to the district attorney or city attorney, who must commence an action therefor.

History: Enacted March 21, 1872, founded upon §§ 170-173 Act April 22, 1850, Stats. 1850, p. 373; amended by Code Commission, Act March 6, 1901, Stats. and Amdts. 1900-1, p. 374, held unconstitutional, see history, § 4 ante; amendment reenacted March 25, 1905, Stats. and Amdts. 1905, pp. 579-580.

§ 531. **THIS TITLE TO APPLY TO NATURAL PERSONS ALIKE WITH CORPORATIONS.** When a bridge, ferry, wharf, chute, or pier is constructed, operated, or owned by a natural person, this title is applicable to such person in like manner as it is applicable to corporations.

History: Enacted March 21, 1872.

[The former Title VII, including §§ 536-541, was repealed by Act March 20, 1905, and the provisions in the following sections substituted therefor. Stats. and Amdts. 1905, p. 491. Prior legislation upon which original Title VII was founded will be found in Stats. 1850, p. 347, § 152; 1857, p. 117, § 2; 1862, p. 290, § 8.]

TITLE VII.

TELEGRAPH AND TELEPHONE CORPORATIONS.

§ 536. May use right of way along waters, roads, and highways.
§ 537. Liability for damaging telegraph or telephone property.
§ 538. Penalty for wilfully or maliciously injuring telegraph or telephone property.
§ 539. Conditions on which damage to subaqueous cable may be recovered.
§ 540. May dispose of certain rights.

§ 536. MAY USE RIGHT OF WAY ALONG WATERS, ROADS, AND HIGHWAYS. Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 492; see introductory note to this title.

§ 537. LIABILITY FOR DAMAGING TELEGRAPH OR TELEPHONE PROPERTY. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph or telephone corporation, is liable to the corporation for all damages sustained thereby. Any vessel which, by dragging its anchor, or otherwise, breaks, injures, or destroys the subaqueous cable of a tele-

graph or telephone corporation, subjects its owner to the damages hereinbefore specified.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 492; see introductory note to this title.

§ 538. **PENALTY FOR WILFULLY OR MALICIOUSLY INJURING TELEGRAPH OR TELEPHONE PROPERTY.** Any person who wilfully and maliciously does any injury to any telegraph or telephone property, mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 492; see introductory note to this title.

§ 539. **CONDITIONS ON WHICH DAMAGES TO SUBAQUEOUS CABLE MAY BE RECOVERED.** No telegraph or telephone corporation can recover damages for the breaking or injuring of any subaqueous telegraph or telephone cable, unless such corporation has previously erected on either bank of the waters under which the cable is placed, a monument, indicating the place where the cable lies, and publishes for one month in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings, and termini of the cable.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 492; see introductory note to this title.

§ 540. **MAY DISPOSE OF CERTAIN RIGHTS.** Any telegraph or telephone corporation may at any time, with the consent of the persons holding two-thirds of the issued stock of the corporation, sell, lease, assign, transfer, or convey any rights, privileges, franchises, or property of the corporation, except its corporate franchise.

History: Enacted March 20, 1905, Stats. and Amdts. 1905, p. 492; see introductory note to this title.

TITLE VIII.

WATER AND CANAL CORPORATIONS.

§ 548. Corporation may obtain contract to supply city or town.
§ 549. Must furnish water for family use upon demand. Rules may be prescribed.
§ 550. Right to use streets, ways, alleys, and roads [repealed].
§ 551. Construction of canal, etc. Construction and repair of bridges. Supervisors may construct bridges and recover therefor.
§ 552. Right of purchasers to use water for irrigating.

§ 548. CORPORATION MAY OBTAIN CONTRACT TO SUPPLY CITY OR TOWN. No corporation formed to supply any city, city and county, or town with water must do so unless previously authorized by an ordinance of the authorities thereof, or unless it is done in conformity with a contract entered into between the city, city and county, or town and the corporation.

[Regulating rates—Term of grant.] Contracts so made are valid and binding in law, but do not take from the city, city and county, or town the right to regulate the rates for water, nor must any exclusive right be granted. No contract or grant must be made for a term exceeding fifty years.

History: Enacted March 21, 1872, founded upon § 3 Act May 3, 1852, Stats. 1852, p. 171.

§ 549. MUST FURNISH WATER FOR FAMILY USE UPON DEMAND. RULES MAY BE PRESCRIBED. All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The

board of supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the state.

History: Enacted March 21, 1872, founded upon § 4 Act April 22, 1858, Stats. 1858, p. 219; amended March 30, 1874, Code Amdts. 1873-4, p. 216; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 375, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 580.

§ 550. RIGHT TO USE STREETS, WAYS, ALLEYS, AND ROADS [repealed.]

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 375, held unconstitutional, see history, § 4 ante; re-repealed March 21, 1905, Stats. and Amdts. 1905, p. 580.

§ 551. CONSTRUCTION OF CANAL, ETC. CONSTRUCTION AND REPAIR OF BRIDGES. SUPERVISORS MAY CONSTRUCT BRIDGES AND RECOVER THEREFOR.

No canal, flume, or other appliance for the conducting of water must be so laid, constructed, or maintained as to obstruct any public highway; and every person or corporation owning, maintaining, operating, or using any such canal, flume, or appliance, crossing or running along any public highway, must construct, maintain, and keep in repair such bridges across the same as may be necessary to the safe and convenient use of such highway by the public; and on failure so to do, the board of supervisors of the county, after seven days' notice in writing to said person or corporation, may construct or repair such bridge or bridges, and recover of such person or corporation the amount of the expenditure made in so doing.

History: Enacted March 21, 1872, founded upon § 4 Act May 14, 1862, Stats. 1862, p. 541; amended March 21, 1905, Stats. and Amdts. 1905, pp. 580-581.

§ 552. **RIGHT OF PURCHASERS TO USE WATER FOR IRRIGATING.** Whenever any corporation, organized under the laws of this state, furnishes water to irrigate lands which said corporation has sold, the right to the flow and use of said water is and shall remain a perpetual easement to the land so sold, at such rates and terms as may be established by said corporation in pursuance of law.

[Person furnishing water entitled to continuance, when.] And whenever any person who is cultivating land on the line and within the flow of any ditch owned by such corporation, has been furnished water by it, with which to irrigate his land, such person shall be entitled to the continued use of said water, upon the same terms as those who have purchased their land of the corporation.

History: Enacted April 3, 1876, Code Amdts. 1875-6, p. 77. **In effect** April 3, 1876.

TITLE IX.

HOMESTEAD CORPORATIONS.

§ 557. Time of corporate existence.
§ 558. By-laws must specify time for and amount of payment of instalments, and penalty for failure to pay. By-laws to be furnished to any member on demand.
§ 559. Advertisement and sale of delinquent and forfeited shares.
§ 560. May borrow and loan funds, how, and for what time.
§ 561. Minor children, wards, and married women may own stock.
§ 562. Forfeiture for speculating in or owning lands exceeding two hundred thousand dollars.
§ 563. When corporation is terminated, and how.
§ 564. Payment of premiums.
§ 565. Annual report to be published.
§ 566. Publication in certain cases.

§ 557. TIME OF CORPORATE EXISTENCE. Corporations organized for the purpose of acquiring lands in large tracts, paying off encumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes, are known as homestead corporations, and must not have a corporate existence for a longer period than ten years.

History: Enacted March 21, 1872, founded upon §§ 1, 3, Act May 20, 1861, Stats. 1861, p. 567; § 1 Act March 30, 1868, Stats. 1867-8, p. 539.

§ 558. BY-LAWS MUST SPECIFY TIME FOR AND AMOUNT OF PAYMENT OF INSTALMENTS, AND PENALTY FOR FAILURE TO PAY. BY-LAWS TO BE FURNISHED TO ANY MEMBER ON DEMAND. Such corporations must specify in their by-laws the times when the instalments of the capital stock are payable, the

amount thereof, and the fines, penalties, or forfeitures incurred in case of default. A printed copy of the articles of incorporation and by-laws must be furnished to any shareholder on demand.

History: Enacted March 21, 1872.

§ 559. **ADVERTISEMENT AND SALE OF DELINQUENT AND FORFEITED SHARES.** Whenever any shares of stock are declared forfeited by resolution of the board of directors, the directors may advertise the same for sale, giving the name of the subscriber and the number of shares, by notice of not less than three weeks, published at least once a week in a newspaper of general circulation in the city, town, or county where the principal place of business of such corporation is located. Such sale must be made at auction, under the direction of the secretary of the company. The corporation may be a bidder, and the shares must be disposed of to the highest bidder for cash. No defect, informality, or irregularity in the proceedings respecting the sale invalidates it, if notice is given as herein provided. After the sale is made the secretary must, on receipt of the purchase money, transfer to the purchaser the shares sold, and after deducting from the proceeds of such sale all instalments then due, and all expenses and charges of sale, must hold the residue subject to the order of the delinquent subscriber.

History: Enacted March 21, 1872, founded upon § 4 Act May 20 ,1861, Stats. 1861, p. 268, as amended April 4, 1864, Stats. 1863-4, p. 492, as amended by § 2 Act March 30, 1868, Stats. 1867-8, p. 540.

§ 560. **MAY BORROW AND LOAN FUNDS, HOW, AND FOR WHAT TIME.** Homestead corporations may borrow money for the purposes of the corporation, not exceeding at any one time one fourth of the aggregate amount of the shares or parts of shares actually paid in, and the

income thereof; no greater rate of interest must be paid therefor than twelve per cent per annum. For the purpose of completing the purchase of lands intended to be divided and distributed, they may borrow on the security of their shares on the land thus purchased, or that owned by the corporation at the time of procuring the loan, any sum of money which, together with the interest contracted to become due thereon, will not exceed ninety per cent of the unpaid amount subscribed by the shareholders; but no loan must be made to the corporation for a term extending beyond that of its existence.

History: Enacted March 21, 1872, founded upon § 5 Act May 20, 1861, Stats. 1861, p. 569, as amended Act March 29, 1870, Stats. 1869-70, p. 474.

§ 561. **MINOR CHILDREN, WARDS, AND MARRIED WOMEN MAY OWN STOCK.** Such shares of stock in homestead corporations as may be acquired by children, the cost of which, and the deposits and assessments on which are paid from the personal earnings of the children, or with gifts from persons other than their male parents, may be taken and held for them by their parents or guardians. Married women may hold such shares as they acquire with their personal earnings, or those of their children, voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands.

History: Enacted March 21, 1872, founded upon § 6 Act May 20, 1861, Stats. 1861, p. 567.

§ 562. **FORFEITURE FOR SPECULATING IN OR OWNING LANDS EXCEEDING TWO HUNDRED THOUSAND DOLLARS.** Homestead corporations must not purchase and sell, or otherwise acquire and dispose of real property, or any interest therein, or any personal property, for the sole purpose of speculation or profit. Nor must any such corporation at any one time own or hold, in

trust or otherwise, for its purposes, real property, or any interest therein, which in the aggregate exceeds in cash value the sum of two hundred thousand dollars.

[Penalty for violation.] For any violation of the provisions of this section, corporations forfeit their corporate rights and powers. On the application of any citizen to a court of competent jurisdiction such forfeiture may be adjudged, and the judgment carries with it costs of the proceedings.

History: Enacted March 21, 1872.

§ 563. WHEN CORPORATION IS TERMINATED, AND HOW. Except for the purpose of winding up and settling its affairs, every homestead corporation must terminate at the expiration of the time fixed for its existence in the articles of incorporation, or when dissolved as provided in this part.

No dividend of funds must be made on termination of its corporate existence, until its debts and liabilities are paid; and upon the final settlement of the affairs of the corporation, or upon the termination of its corporate existence, the directors, in such manner as they may determine,

Must divide its property among its shareholders in proportion to their respective interests, or, upon the application of a majority in interest of the stockholders, must sell and dispose of any or all of the real estate of the corporation upon such terms as may be most conducive to the interests of all the stockholders, and must convey the same to the purchaser, and distribute the proceeds among the shareholders, or may at any time, when best for the interests of all the shareholders, cause the lands of the corporation to be subdivided into lots and distributed, by sale for premiums, at auction or otherwise, among the shareholders.

History: Enacted March 21, 1872, founded upon § 7 Act May 20, 1861, Stats. 1861, p. 569; § 1 Act March 29, 1870, Stats. 1869-70, p. 474.

§ 564. **PAYMENT OF PREMIUMS.** Such premiums on lots may be made payable at the time they are bid off, and, if not so paid on any lot or land, the directors may immediately offer the same for sale again. If made payable at a future day, and any shareholder fails to pay his bid on the day the same is made due and payable, the directors may advertise and sell the shares of stock representing the lots of land on which the premiums remain unpaid, in the manner provided in the by-laws for the sale of shares on account of delinquent instalments and premiums.

History: Enacted March 21, 1872, founded upon § 1 Act March 29, 1870, Stats. 1869-70, p. 474.

§ 565. **ANNUAL REPORT TO BE PUBLISHED.** The actual financial condition of all homestead corporations must, by the directors thereof, be published annually in the [a] newspaper published at the principal place of business of the corporation, for four weeks, if published in a weekly, and two weeks, if published in a daily. The statement must be made up to the end of each year, and must be verified by the oath of the president and secretary, showing the items of property and liabilities.

History: Enacted March 21, 1872, founded upon § 8 Act May 20, 1861, Stats. 1861, p. 569.

§ 566. **PUBLICATION IN CERTAIN CASES.** In any case in which a publication is required, and no newspaper is published at the principal place of business, the publication may be made in a paper published in an adjoining county.

History: Enacted March 21, 1872.

TITLE X.

SAVINGS AND LOAN CORPORATIONS.

§ 571. May loan money, on what terms, how, and to whom, and how long.
§ 572. Capital stock, and rights and privileges thereof.
§ 573. No dividends, except from surplus profits. To contract no liability, except for deposits.
§ 574. Property which may be owned by corporation, What may not hold, etc.
§ 575. Married women and minors may own stock in their own right.
§ 576. May issue transferable certificates of deposit. Special certificates.
§ 577. To provide a reserve fund for the payment of losses.
§ 578. Prohibition on director and officer, and what vacates office.
§ 579. Definition of phrase "create debts."
§ 580. Banks, amount of capital stock required [repealed].
§ 581. Restrictions on savings banks.
§ 582. True name of persons engaged in banking business must be shown.
§ 583. Dividends. Surplus funds.
§ 583a. Capital actually paid up must be published.
§ 583b. Biennial report to bank commissioners of unclaimed deposits.

§ 571. MAY LOAN MONEY, ON WHAT TERMS, HOW, AND TO WHOM, AND HOW LONG. Corporations organized for the purpose of accumulating and loaning the funds of their members, stockholders, and depositors, may loan and invest the funds thereof, receive deposits of money, loan, invest, and collect the same, with interest, and may repay depositors with or without interest. No such

corporation must loan money, except on adequate security on real or personal property, and such loan must not be for a longer period than ten years.

History: Enacted March 21, 1872, founded upon §§ 4, 5 Act April 11, 1862, Stats. 1862, p. 199, as amended Act April 12, 1864, Stats. 1863-4, p. 158; amended March 15, 1901, Stats. and Amdts. 1900-1, p. 295. **In force** March 15, 1901.

§ 572. **CAPITAL STOCK, AND RIGHTS AND PRIVILEGES THEREOF.** When savings and loan corporations have a capital stock specified in their articles of incorporation, certificates of the ownership of shares may be issued; and the rights and privileges to be accorded to, and the obligations to be imposed upon, such capital stock, as distinct from those of depositors, must be fixed and defined, either in the articles of incorporation or in the by-laws.

History: Enacted March 21, 1872, founded upon § 17 Act April 11, 1862, Stats. 1862, p. 203.

§ 573. **NO DIVIDENDS, EXCEPT FROM SURPLUS PROFITS. TO CONTRACT NO LIABILITY, EXCEPT FOR DEPOSITS.** The directors of savings and loan corporations may, at such times and in such manner as the by-laws prescribe, declare and pay dividends of so much of the profits of the corporation, and of the interest arising from the capital stock and deposits, as may be appropriated for that purpose under the by-laws or under their agreements with depositors.

The directors must not contract any debt or liability against the corporation for any purpose whatever, except for deposits. The capital stock and the assets of the corporation are a security to depositors and stockholders, depositors having the priority of security over the stockholders, but the by-laws may provide that the same security shall extend to deposits made by stockholders.

History: Enacted March 21, 1872, founded upon § 10, Act April 11, 1862, Stats. 1862, p. 201, as amended Act March 4, 1870, Stats. 1869-70, p. 130.

§ 574. **PROPERTY WHICH MAY BE OWNED BY CORPORATION. WHAT MAY NOT HOLD, ETC.** Savings and loan corporations may purchase, hold and convey real and personal property as follows:

1. **The lot and building in which the business of the corporation is carried on,** the cost of which must not exceed one hundred thousand dollars; except, on a vote of two-thirds of the stockholders the corporation may increase the sum to an amount not exceeding two hundred and fifty thousand dollars;

2. **Such as may have been mortgaged,** pledged or conveyed to it in trust, for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation;

3. **Such as may have been purchased at sales under pledges,** mortgages or deeds of trust made for its benefit, for money so loaned, and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon;

4. **No such corporation must purchase, hold or convey real estate in any other case** or for any other purpose; and all real estate described in subdivision three of this section must be sold by the corporation within ten years after the title thereto is vested in it by purchase or otherwise;

5. **No such corporation must purchase, own, or sell personal property,** except such as may be requisite for its immediate accommodation for the convenient transaction of its business, mortgages on real estate, bonds, securities or evidences of indebtedness, public or private, gold and silver bullion and United States mint certificates of ascertained value and evidences of debt issued by the United States;

6. **No such corporation must purchase, hold or convey bonds,** securities or evidences of indebtedness, public or private, except bonds of the United States, of the state of California, and of the counties, cities, or cities and counties, or towns, or school districts of the state of California, or bonds of railroad or street-railroad corporations owning property

and having their principal place of business in the state of California, unless such corporation has a capital stock or reserve fund paid in of not less than one hundred thousand dollars.

History: Enacted March 21, 1872, founded upon § 13 Act April 11, 1862, Stats. 1862, p. 202, as amended by Act March 12, 1864, Stats. 1863-4, p. 158, and by Act March 31, 1866, Stats. 1865-6, p. 626; amended March 30, 1874, Code Amdts. 1873-4, p. 273; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 375, held unconstitutional, see history, § 4 ante; amended March 23, 1901, Stats. and Amdts. 1900-1, p. 659. **In force** March 23, 1901.

§ 575. **MARRIED WOMEN AND MINORS MAY OWN STOCK IN THEIR OWN RIGHT.** Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor.

History: Enacted March 21, 1872, founded upon §§ 14, 15 Act April 11, 1862, Stats. 1862, p. 202, as amended Act March 12, 1864, Stats. 1863-4, p. 160, and amendatory Act March 4, 1870, Stats. 1869-70, p. 132.

§ 576. **MAY ISSUE TRANSFERABLE CERTIFICATES OF DEPOSIT. SPECIAL CERTIFICATES.** Savings and loan corporations may issue general certificates of deposit, which are transferable, as in other cases, by indorsement and delivery; may issue, when requested by the depositor, special certificates, acknowledging the deposit by the person therein named of a specified sum of money, and expressly providing on the face of such certificate that the sum so deposited and therein named may be transferred only on the books of the corporation; payment thereafter made by the corporation to the depositor named in such certificate, or to his assignee named upon the books of the corporation, or, in case of death, to the legal representative

of such person, of the sum for which such special certificate was issued, discharges the corporation from all further liability on account of the money so paid.

History: Enacted March 21, 1872, founded upon § 1 Act March 28, 1868, Stats. 1867-8, p. 459.

§ 577. **TO PROVIDE RESERVE FUND FOR THE PAYMENT OF LOSSES.** Savings and loan corporations may prescribe by their by-laws the time and conditions on which repayment is to be made to depositors; but whenever there is any call by depositors for repayment of a greater amount than the corporation may have disposable for that purpose, the directors or officers thereof must not make any new loans or investments of the funds of the depositors, or of the earnings thereof, until such excess of call has ceased.

[Corporations without capital—Reserve fund.] The directors of any such corporation having no capital stock must retain, on each dividend day, at least five per cent of the net profits of the corporation, to constitute a reserve fund, which must be invested in the same manner as other funds of the corporation, and must be used toward paying any losses which the corporation may sustain in pursuing its lawful business.

[Excess of reserve fund—Disposition on dissolution.] The corporation may provide by its by-laws for the disposal of any excess in the reserve fund over one hundred thousand dollars, and the final disposal, upon the dissolution of the corporation, of the reserve fund, or of the remainder thereof, after payment of losses.

History: Enacted March 21, 1872, founded upon § 11 Act April 11, 1862, Stats. 1862, p. 201; Acts March 31 and April 4, 1870, Stats. 1869-70, p. 523.

§ 578. **PROHIBITION ON DIRECTOR AND OFFICER, AND WHAT VACATES OFFICE.** No director or officer of any savings and loan corporation must, directly

or indirectly, for himself or as the partner or agent of others, borrow any of the deposits or other funds of such corporation, nor must he become an indorser or surety for loans to others, nor in any manner be an obligor for moneys borrowed of or loaned by such corporation. The office of any director or officer who acts in contravention of the provisions of this section immediately thereupon becomes vacant.

History: Enacted March 21, 1872.

§ 579. DEFINITION OF PHRASE "CREATE DEBTS." Receiving deposits, issuing certificates of deposit, checks, and bills of exchange and the like, in the transaction of the business of savings and loan corporations, must not be construed to be the creation of debts within the meaning of the phrase "create debts," in section 309.

History: Enacted March 21, 1872.

§ 580. BANKS, AMOUNT OF CAPITAL STOCK REQUIRED [repealed].

History: Original section enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 376, held unconstitutional, see history, § 69 ante; an entirely different provision with sectional number enacted March 5, 1903, Stats. and Amdts. 1903, p. 87; re-enacted almost verbatim March 20, 1905, Stats. and Amdts. 1905, p. 507; repealed March 18, 1907, Stats. and Amdts. 1907, p. 576, Kerr's Stats. and Amdts. 1906-7, p. 415.

§ 581. RESTRICTIONS ON SAVINGS BANKS. No savings bank shall lend to exceed sixty per cent of the market value of any piece of real estate to be taken as security, except for the purpose of facilitating the sale of property owned by the corporation. And it shall be unlawful for any savings and loan society, or savings bank, to purchase, invest, or loan its capital, or the money of its depositors, or any part of either, in mining shares or stocks. Any presi-

dent or managing officer who knowingly consents to a violation of the above provision shall be deemed guilty of a felony.

History: Enacted March 21, 1903, Stats. and Amdts. 1903, p. 352. **In force** March 21, 1903.

§ 582. **TRUE NAMES OF PERSONS ENGAGED IN BANKING BUSINESS MUST BE SHOWN.** Every person or number of persons not being incorporated, engaged in the business of banking, or publicly receiving money on deposit must conduct such business under a name which shows the true names of all persons engaged therein, unless such person or persons have complied with the provisions of article seven of chapter two of title ten of part four of division third of said Civil Code.

[Penalty for violation.] Every person violating any of the provisions of this section is guilty of a misdemeanor, and is punishable by imprisonment in the county jail for not less than ninety days nor more than six months, or by fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment.

History: Enacted March 21, 1903, Stats. and Amdts. 1903, p. 352. **In force** March 21, 1903.

§ 583. **DIVIDENDS. SURPLUS FUNDS.** The directors of any savings bank, bank, or banking corporation having a capital stock, may semi-annually declare a dividend of so much of the net profits of the stockholders as they shall judge expedient; but every such corporation shall, before the declaration of such dividend, carry at least one tenth (1-10) part of the net profits of the stockholders for the preceding half year to its surplus or reserve fund until the same shall amount to twenty-five per centum of its paid-up capital stock. But the whole or any part of such surplus or reserve fund, if held as the exclusive property of stockholders, may

at any time be converted into paid-up capital stock, in which event such surplus or reserve fund shall be restored in manner as above provided until it amounts to twenty-five per centum of the aggregate paid-up capital stock. A larger surplus or reserve fund may be created, and nothing herein contained shall be construed as prohibitory thereof.

History: Enacted March 21, 1903, Stats. and Amdts. 1903. p. 353. **In effect** March 21, 1903.

§ 583a. **CAPITAL ACTUALLY PAID UP MUST BE PUBLISHED.** No banker, nor officer of any bank or corporation doing a banking business, shall advertise in any manner, or publish any statement of the capital stock authorized or subscribed, unless he advertise and publish in connection therewith, the amount of capital actually paid up. Any officer, or the officers of any bank or corporation doing a banking business, advertising in any manner, or publishing, a statement of the capital stock of such bank or banking corporation, authorized or subscribed, without the statement in connection therewith of the stock actually paid up, shall be guilty of a misdemeanor.

History: Enacted March 21, 1903, Stats. and Amdts. 1903, p. 353. **In effect** March 21, 1903.

§ 583b. **BIENNIAL REPORT TO BANK COMMISSIONERS OF UNCLAIMED DEPOSITS.** The president of every savings bank, savings and loan society, and every other bank, depository, society, or institution in which deposits of money are made, whether any interest or dividend is paid, or agreed to be paid, thereon or not, must, within fifteen days after the first day of January of every odd-numbered year, return to the board of bank commissioners a sworn statement showing the amount placed to his credit, the last known place of residence or post-office address, and the fact of death, if known to such president, of every depositor who has not made a deposit therein or withdrawn

therefrom any part of his deposit, or any part of the interest or dividends thereon, for a period of more than ten years next preceding. Such president must give notice of these deposits in one or more newspapers published in or nearest the town, city, or city and county where such bank, society, or other institution is situated or has its principal place of business, at least once a week for four successive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president to be living, or which, with the accumulation thereon, is less than fifty dollars. The board of bank commissioners must incorporate in their subsequent report each return made to them as provided in this section. Any president of any of the institutions mentioned in this section who neglects or refuses to make the sworn statement required thereby is guilty of a misdemeanor.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 580-581.

The act contains two repealing sections as follows: § 2. The act entitled "An act to compel savings banks to publish a sworn statement of all unclaimed deposits," approved March 23, 1893, is hereby repealed. § 3. The act entitled "An act to compel all depositories of money and commercial banks to publish a sworn statement of all unclaimed deposits," approved February 25, 1897, is hereby repealed.

[The original Title XI, embracing §§ 584-587, and each and every section thereof, was repealed March 21, 1905, and a new Title XI substituted therefor, embracing §§ 586-590, Stats. and Amdts. 1905, pp. 584-587, and is substantially the codification of Act 1880 (Stats. 1880, p. 134), as amended by Act 1897 (Stats. and Amdts. 1897, p. 38), and amendments proposed by Code Commission, Act March 16, 1901 (Stats. and Amdts. 1900-1, p. 377), which latter was held unconstitutional, see history, § 4 ante.]

TITLE XI.

MINING CORPORATIONS.

§ 586. Transfer agencies. [May establish in other states.]
§ 587. Stock issued at transfer agencies. [Surrender of certificate.]
§ 587a. Consolidation of mining corporations. [Written consent of stockholders.]
§ 588. Books and balance-sheet to be kept by secretary. Stockholders' right to inspect.
§ 589. Right of stockholders to visit mine with expert. [Duty of superintendent.]
§ 590. Liability of presidents and directors. [Refusal to permit examination; damages.]

§ 586. TRANSFER AGENCIES. [MAY ESTABLISH IN OTHER STATES.] Any corporation organized in this state for the purpose of mining or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States, for the transfer and issuing of their stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 584-585; see introductory note to this title.

§ 587. STOCK ISSUED AT TRANSFER AGENCIES. [SURRENDER OF CERTIFICATE.] All stock of any such corporation, issued at a transfer agency, must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency. No stock must be issued at a transfer agency unless the certificate of stock, in lieu of which the same is issued, is at the time surrendered for cancelation.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 585; see introductory note to this title.

§ 587a. CONSOLIDATION OF MINING CORPORATIONS. [WRITTEN CONSENT OF STOCKHOLDERS.] It is lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such corporations so desiring to consolidate their interests; but

No such consolidation must take place without the written consent of the stockholders representing two thirds of the capital stock of each corporation, and no such consolidation can, in any way, relieve such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation,

Due notice of the same must be given, by advertising, for one month, in at least one newspaper in the county where the said mining property is situated, if there is one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporation is.

[Certificate of consolidation—Filed, where.] And when the consolidation is completed, a certificate thereof, con-

taining the manner and terms of such consolidation, must be filed in the office of the county clerk of the county in which the original certificate of incorporation of each of said corporations is filed, and a copy thereof must be filed in the office of the secretary of state.

[Same—To be signed by boards—Calling meeting of stockholders—Notice.] Such certificate must be signed by a majority of each board of trustees or directors of the original corporations, and it is their duty to call, within thirty days after the filing of such certificate, a meeting of the stockholders of all of said corporations so consolidated, to elect a board of trustees or directors for the consolidated corporation, for the year thence next ensuing; and to cause notice of the time and place fixed for such meeting to be mailed to each stockholder of each of such corporations at his last known place of residence or business at least ten days before the time fixed for such meeting. The said certificate must also contain all the requirements prescribed by section two hundred and ninety.

History: Enacted March 21, 1905, Stats. and Amdts. 1905. p. 585; see introductory note to this title.

§ 588. BOOKS AND BALANCE-SHEET TO BE KEPT BY SECRETARY. STOCKHOLDERS' RIGHT TO INSPECT. It is the duty of the secretary of every corporation formed for the purpose of mining, or conducting mining in California, whether such corporation be formed and organized under the laws of the state of California or of any other state, territory, or foreign country, to keep at some place within the state of California an office and in such office to keep a complete set of books showing all receipts and expenditures of such corporation, the sources of such receipts, and the objects of such expenditures, and also all transfers of stock. All books and papers must, at all times during business hours, be open to the inspection of any stockholder. He is entitled to be accompanied by an expert, and to make copies or extracts from any such books or papers.

[Stockholder may examine mining property.] He may, at reasonable hours, examine such mining property, accompanied by an expert, take samples, and make such other examination as he may deem necessary.

[Monthly balance-sheet—Verified by oath, of whom.] It is the duty of the directors, on the second Monday of each and every month, to cause to be made an itemized account or balance-sheet for the previous month, embracing a full and complete statement of all disbursements and receipts, showing from what sources such receipts were derived, and to whom and for what object or purpose such disbursements or payments were made; also all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such account or balance-sheet must be verified under oath by the president and secretary, and posted in some conspicuous place in the office of the company.

[Superintendent to file monthly account; what must show.] It is the duty of the superintendent, on the first Monday of each month, to file with the secretary an itemized account, verified under oath, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. Such account must also contain a verified statement showing the number of men employed under him, and for what purpose, and the rate of wages paid to each.

[Same—Report attached to account—Open to inspection.] He must attach to such account a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part of mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It is his duty to forward to the office of the company a full report, under oath, of all discoveries of ores or mineral-bearing quartz made in said

mine, whether by boring, drifting, sinking, or otherwise, together with the assay value thereof. All accounts, reports, and correspondence from the superintendent must be kept in some conspicuous place in the office of said company, open to the inspection of all stockholders.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 585-586; see introductory note to this title.

§ 589. RIGHT OF STOCKHOLDER TO VISIT MINE WITH EXPERT. [DUTY OF SUPERINTENDENT.] Any stockholder of a corporation formed under the laws of this state for the purpose of mining, is entitled to visit, accompanied by his expert, and examine the mine or mines owned by such corporation, and every part thereof, at any time he may see fit; and when such stockholder applies to the president of such corporation, he must immediately cause the secretary thereof to issue and deliver to such applicant an order, under the seal of the corporation, directed to the superintendent, commanding him to show and exhibit such parts of said mine or mines as the party named in said order may desire to visit and examine.

It is the duty of the superintendent, on receiving such order, to furnish such stockholder every facility for making a full and complete inspection of said mine or mines, and of the workings therein, and to accompany said stockholder either in person, or to furnish some person familiar with said mine or mines to accompany him in his visit to and through such mine or mines, and every part thereof.

[Failure of superintendent to obey orders—Removal.] If the superintendent fails to obey such order, such stockholder is entitled to recover, in any court of competent jurisdiction, against the corporation, the sum of one thousand dollars, and traveling expenses to and from the mine, as liquidated damages, together with costs of suit. In case of such refusal, it is the duty of the directors of the corpora-

tion forthwith to remove the officer so refusing, and thereafter he must not be employed directly or indirectly by the corporation, nor must any salary be paid to him.

History: Enacted March 21, 1905, pp. 586-587; see introductory note to this title.

§ 590. **LIABILITY OF PRESIDENT AND DIRECTORS. [REFUSAL TO PERMIT EXAMINATION; DAMAGES.]** In case of the refusal or neglect of the president to cause to be issued by the secretary the order mentioned in section five hundred and eighty-nine, such stockholder is entitled to recover against said president the sum of one thousand dollars and costs, as provided in the last section.

If the directors fail to have the reports and accounts current made and posted as provided in section five hundred and eighty-eight, they are liable, either severally or jointly, to an action by any stockholder complaining thereof, and on proof of such refusal or failure, he may recover judgment for actual damages sustained by him, with costs of suit.

[Removal of directors.] Each of such defaulting directors is also liable to removal for such neglect.

History: Enacted March 21, 1905, p. 587; see introductory note to this title.

[This title was added by Act March 21, 1905, Stats. and Amdts. 1905, pp. 587-589. The sections are a verbatim re-enactment of the similarly numbered sections of the Code Commission, Act March 16, 1901 (Stats. and Amdts. 1900-1, pp. 380, 381), which was held unconstitutional, see history, § 4 ante. This added title is a codification of Act 1866 (Stats. 1865-6, p. 469), as amended by Act 1868 (Stats. 1867-8, p. 15), and Act 1885 (Stats. and Amdts. 1885, p. 76). See Stats. and Amdts. 1900-1, p. 429.]

TITLE XIa.

CORPORATIONS FOR THE FORMATION OF CHAMBERS OF COMMERCE, BOARDS OF TRADE, MECHANICS' INSTITUTES, AND OTHER KINDRED ASSOCIATIONS.

§ 591. Formation, organization and powers of.
§ 592. Capital stock and certificates of.
§ 592a. Powers which may be conferred on the trustees, directors, or the executive committee.
§ 592b. Power to acquire, sell, possess, and use property.
§ 592c. The by-laws. [Meetings, how called and conducted.]
§ 592d. Power to levy and collect assessments.
§ 592e. Pre-existing corporations may become entitled to the benefit of this title.

§ 591. FORMATION, ORGANIZATION AND POWER OF. Corporations for the formation and organization of chambers of commerce, boards of trade, mechanics' institutes, and other associations formed for the extension and promotion of trade and commerce, or the advancement, protection, and improvement of the mechanic arts, may be formed by twenty or more persons, who must execute and file articles of incorporation as prescribed in chapter one of title one of part four of this code. Upon receiving from the secretary of state a certificate of the filing with him of a certified copy of its articles of incorporation, such corporation becomes a body corporate, and by its corporate name has succession for the period limited in its articles, and power: To sue and be sued in any court; to make and use a common seal, and alter it at pleasure; to lease, purchase,

hold, sell, mortgage, convey in trust, convey, release from trust or mortgage, such real and personal property as hereinafter provided; to elect and appoint such officers, agents, and servants as the business of the corporation may require; and to make by-laws, not inconsistent with the laws of this state, providing for the organization of the corporation and the management of its affairs.

[Business.] No corporation formed under this title must engage in any mercantile, commercial, or mechanical business.

History: Enacted. March 21, 1905, Stats. and Amdts. 1905, p. 588.

§ 592. **CAPITAL STOCK AND CERTIFICATES OF.** Every corporation formed under this title may have a capital stock and issue certificates to represent the shares thereof, if the articles of incorporation contain a statement of the amount of its capital stock and the number of shares into which it is divided.

[Rights and privileges of stockholders.] The rights and privileges to be accorded to stockholders are distinct from those to be accorded to members at large of the corporation, and the obligations to be imposed upon stockholders in the same relation must be fixed and established in the by-laws of the corporation.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 588.

§ 592a. **POWER WHICH MAY BE CONFERRED ON THE TRUSTEES, DIRECTORS, OR THE EXECUTIVE COMMITTEE.** The corporation may confer upon a board of trustees or directors, or upon a body to be styled the executive committee of the corporation, the right to exercise all or any of the corporate powers, if the articles of incorporation state that the right to exercise the corporate powers is to be confided to such board of trustees or directors or to such executive committee, and the number of

trustees, directors, or committee, and the names of those selected to take charge of the affairs of the corporation for the first six months.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 588-589.

§ 592b. **POWER TO ACQUIRE, SELL, AND USE PROPERTY.** Every corporation formed under this title may lease, purchase, have, hold, use, take possession of, and enjoy in fee simple or otherwise any personal or real property within the state necessary for the uses and purposes of the corporation, and may sell, lease, deed in trust, alien, or dispose of the same at its pleasure.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 589.

§ 592c. **THE BY-LAWS. [MEETINGS, HOW CALLED AND CONDUCTED.]** The by-laws of any corporation formed under this title without capital stock must prescribe how members of the corporation shall be admitted and how expelled, and how officers, agents, and servants shall be appointed. Such provisions in the by-laws have force and effect as between private parties and the corporation.

[Manner of calling and conducting meetings.] All corporations formed under the provisions of this title must determine, by their by-laws, the manner of calling and conducting their meetings, the number of members that constitute a quorum, the manner of levying and collecting assessments, the officers of the corporation, the manner of their election or appointment and their tenure of office, and may prescribe suitable penalties for the violation of such by-laws, not exceeding in any case one hundred dollars for any one offense.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 589.

§ 592d. **POWER TO LEVY AND COLLECT ASSESSMENTS.** Every corporation formed under the provisions of this title has power to levy and collect, from the members thereof, for the purpose of paying the proper and legal expenses of the corporation, assessments in such manner as may be prescribed by its by-laws, but not otherwise.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 589.

§ 592e. **PRE-EXISTING CORPORATIONS MAY BECOME ENTITLED TO THE BENEFIT OF THIS TITLE.** Every corporation, association, or institution formed prior to the enactment of this title, for any of the purposes contemplated thereby, may, by a vote of the majority of its members voting at a meeting called for that purpose, become entitled to the benefit thereof on filing the ceretificate hereinafter required.

Notice of such meeting and of its object must be published in a newspaper of general circulation in the county in which the principal place of business of the corporation, association, or institution is located, for at least two weeks before the day on which the meeting is to be held.

[Certificate, execution and contents.] Such certificate must be signed and acknowledged by at least five members of the corporation, association, or institution, must contain a list of the members who desire to become members, and must be filed with the county clerk of such county, and a copy thereof, certified by him, must be filed with the secretary of state. Thereupon such corporation, association, or institution possesses all the powers and privileges conferred by this title.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 589.

TITLE XII.

RELIGIOUS, SOCIAL, AND BENEVOLENT CORPORATIONS.

§ 593. Corporations not for profit. Number of individuals.
§ 593[a]. Same.
§ 594. Additional facts, articles of incorporation to set out [repealed].
§ 595. Amount of real estate to be owned by such corporations.
§ 596. How much land friendly, etc., societies may hold.
§ 597. Directors to make verified report annually.
§ 598. Sale, mortgage, and bond of real property.
§ 599. What by-laws, etc., may provide for.
§ 600. Members admitted after incorporation.
§ 601. No member to transfer membership, etc.
§ 602. Religious society may become a corporation sole.
§ 602a. Corporation sole, continuous existence.
§ 603. Incorporation of religious society.
§ 604. Head office, annual election, etc.
§ 604a. Formation of religious corporations. Directors.
§ 605. Consolidation of corporations.

§ 593. CORPORATIONS NOT FOR PROFIT. NUMBER OF INDIVIDUALS. Any number of persons associated together for any purpose, where pecuniary profit is not their object, and for which individuals may lawfully associate themselves, may, in accordance with the rules, regulations, or discipline of the association, elect directors, the number thereof to be not less than three nor more than thirty-one, and may incorporate themselves as provided in this title.

History: Enacted March 21, 1872, founded upon Stats. 1869-70, pp. 46 and 420 § 1; amended April 3, 1880, Code Amdts. 1880 (C. C. pt.), p. 6; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 381, held unconstitutional, see Kerr's Cyc. C. C. § 4; amendment re-enacted March 18, 1905, Stats. and Amdts. 1905, p. 113; March 18, 1907, Stats. and Amdts. 1907, p. 579, Kerr's Stats. and Amdts. 1906-7, p. 415; February 24, 1911, Stats. and Amdts. 1911, p. 77.

This section was again amended on May 1, 1911, which amendment is given below as § 593[a].

§ 593[a]. SAME. Any number of persons, associated together for any lawful purpose other than pecuniary profit, may incorporate their said association, as provided in this title.

History: Enacted March 21, 1872, founded upon Stats. 1869-70, pp. 46, 420 § 1; amended April 3, 1880 (C. C. pt.), p. 6; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 381, held unconstitutional, see Kerr's Cyc. C. C. § 4; amendment re-enacted March 18, 1905, Stats. and Amdts. 1905, p. 113; March 18, 1907, Stats. and Amdts. 1907, p. 579, Kerr's Stats. and Amdts. 1906-7, p. 415; February 24 and May 1, 1911. Stats. and Amdts. 1911, pp. 77, 1434.

§ 594. ADDITIONAL FACTS, ARTICLES OF INCORPORATION TO SET OUT [repealed].

History: Enacted March 21, 1872, founded upon § 176, Act April 22, 1850, Stats. 1850, p. 374, as amended April 8, 1862, Stats. 1862 ,p. 125; repealed May 1, 1911, Stats. and Amdts. 1911, p. 1434.

§ 595. AMOUNT OF REAL ESTATE TO BE OWNED BY SUCH CORPORATIONS. All such corporations may hold all the property of the association owned prior to incorporation, or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association, and providing burial-grounds for its deceased members, not to exceed six whole lots in any city or town, nor more than fifty acres in the country, the annual increase, income or profit, whereof must not exceed fifty thousand dollars; provided, that any such corporation now or hereafter having, and having had continuously, for the next preceding three years, the care, custody, control, and maintenance each year, upon an annual average of not less than one hundred orphans, half orphans, and indigent minor children, at any one orphan asylum, shall be entitled and allowed to own and possess

any number of acres not exceeding one hundred and sixty acres of land in the country, outside of any incorporated city or town, and the annual income or profit of which does not exceed fifty thousand dollars; and provided further, that the limitations herein provided for shall not apply to corporations formed, or to be formed, under section six hundred and two of the Civil Code, when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes or to corporations organized for social purposes and purposes of recreation and not for profit; and provided further, that the limitations herein provided for shall not apply to corporations organized other than for profit, when the land is timber land, and not exceeding one hundred and sixty acres in extent, and is held or used for the purposes of the organizations, in which case said land shall be subject to all laws regulating the preservation of forests.

History: Enacted March 21, 1872, founded upon § 182, Act April 22, 1850, Stats. 1850, p. 374; amended Act May 3, 1852, Stats. 1852, p. 168; Act May 3, 1853, Stats. 1853, pp. 140-141; Act March 6, 1863, Stats. 1863, p. 34; amended April 6, 1881, Stats. and Amdts. 1881, p. 9; April 19, 1899, Stats. and Amdts. 1899, p. 10; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 382, held unconstitutional, see history, § 4 ante; amendment re-enacted substantially in form passed in 1901, March 13, 1903, Stats. and Amdts. 1903, p. 136; amended February 21, 1905, Stats. and Amdts. 1905, p. 18.

§ 596. **HOW MUCH LAND FRIENDLY, ETC., SOCIETIES MAY HOLD.** In addition to that provided for in the preceding section, friendly societies and pioneer associations may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith. In case any such corporation is the owner, by donation or purchase, of more lands than herein or in preceding section provided for, such surplus must be sold and

conveyed by the corporation within five years after its acquisition. Such sale may be made without the order or decree of the superior court as hereinafter provided.

History: Enacted March 21, 1872; amended Act Jan. 25, 1878, Code Amdts. 1877-8, p. 84; Act April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 6.

§ 597. **DIRECTORS TO MAKE VERIFIED REPORT ANNUALLY.** The directors must annually make a full report of all property, real and personal, held in trust for their corporation by them, and of the condition thereof, to the members of the association for which they are acting.

History: Enacted March 21, 1872, founded upon § 183, Act April 22, 1850, Stats. 1850, p. 374; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 382, held unconstitutional, see history, § 4 ante.

§ 598. **SALE, MORTGAGE, AND BOND OF REAL PROPERTY.** Before selling, mortgaging, aliening, encumbering or granting its real property, or any part thereof, except a burial plot situated in grounds dedicated to burial purposes, a corporation organized under this title must first make it appear that the same is for its interest to the satisfaction of the superior court of the county wherein said real property is situated.

[Filing petition.] To this end said corporation shall file with the clerk of said court a verified petition, describing the property affected, showing that the selling, mortgaging, aliening, encumbering, or granting of said property is for its interest, and praying that leave therefor be granted.

[Hearing on petition.] Thereupon the court shall make an order reciting that said leave has been prayed for, describing the property affected, and fixing a time and place for the hearing of the petition. Thereafter copies of said order shall be kept posted conspicuously for a period of ten days at the following places: (1) on the real property affected; (2) at

the place where the court is held; (3) at any other public place in said county where the said court shall direct. At the time set for the hearing the court must require proof that said notice has been faithfully given; and any member may appear and oppose or support the granting of the leave. If satisfied that it is for the interest of said corporation, said court shall thereupon grant said leave, and may authorize the said corporation to sell and convey its said property and to incur indebtedness and secure the same by deed of trust or mortgage upon its said real property;

[Power to grant easements.] Provided, however, that any such corporation shall have the power by resolution, entered upon the minutes of such corporation, to grant easements to municipal or other public corporations for public street, alley or highway purposes and rights of way for publicly owned utilities and public uses, upon the approval of the superior court of the county wherein the real property of such corporation is situated, obtained in the same manner as herein provided for the selling, mortgaging, aliening or encumbering of its said property.

History: Enacted March 21, 1872, founded upon § 183, Act April 22, 1850, Stats. 1850, p. 374; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 382, held unconstitutional, see Kerr's Cyc. C. C. § 4; amended May 1, 1911, Stats. and Amdts. 1911, p. 1434; June 10, 1913, Stats. and Amdts. 1913, p. 565. **In effect** August 10, 1913.

§ 599. BY-LAWS, ETC., WHAT MAY PROVIDE FOR.

Corporations now organized or that may hereafter be organized for purposes other than profit, may, either in their by-laws, ordinances, constitutions, or articles of incorporation, provide for:

1. [Qualification of members.] The qualification of members, mode of election or appointment, and terms of admission to membership;

2. **The fees** of admission and dues to be paid to their treasurer by members;

3. **[Quorum—Election of Directors.]** The number of persons that shall constitute a quorum at any meeting of the members of the corporation, and the number of directors who shall constitute a quorum at any meeting of the board of directors, and the election of directors or other officers of the corporation by a meeting of the members of the corporation so constituted, or by a meeting of the board of directors so constituted, and the appointment or selection of directors, or other officers, in any manner; and if any corporation now organized, or that may hereafter be organized, for purposes other than profit, does in its by-laws, ordinances, constitutions or articles of incorporation, provide for an election of directors or other officers of the corporation by a meeting of the members of the corporation so constituted, or by a meeting of the board of directors so constituted, or for the appointment or selection of directors or other officers, in any manner, then such election or appointment or selection shall be as valid as if made at an election at which a majority of the members of the corporation were present and voted;

4. **[Manner of voting.]** The manner of voting by the members of the corporation, which may be by ballot in the manner provided for by section three hundred twenty-one **b** of this code, or in any other manner provided for by the by-laws, ordinances, constitutions, or articles of incorporation of any corporation now organized, or that may hereafter be organized, for purposes other than profit;

5. **[Expulsion of members.]** The expulsion and suspension of members for misconduct or non-payment of dues, also for restoration to membership;

6. **[Organization of board, etc.]** A special method of organizing the board of directors, and a special method of increasing or diminishing the number of directors within the limits as to number prescribed by section five hundred ninety-three of this code;

7. [Indebtedness.] Contracting, securing and limiting the amount of their indebtedness;

8. [Rules, regulations, discipline.] That the rules, regulations or discipline, for the time being, of any society, religious denomination, church, or other corporation, now organized or which may hereafter be organized for purposes other than profit, shall always be a part of their by-laws, ordinances, constitutions or articles of incorporation;

9. [Further regulations.] Other regulations not repugnant to the constitution or laws of the state and consonant with the objects of the corporation.

History: Enacted March 21, 1872; amended March 14, 1885, Stats. and Amdts. 1885, p. 136; March 31, 1897, Stats. and Amdts. 1897, p. 246; February 24, 1911, Stats. and Amdts. 1911, p. 77; April 29, 1915, Stats. and Amdts. 1915, p. 302. **In effect** August 8, 1915.

§ 600. MEMBERS ADMITTED AFTER INCORPORATION. Members admitted after incorporation have all the rights and privileges, and are subject to the same responsibilities, as members of the association prior thereto.

History: Enacted March 21, 1872, founded upon § 8, Act April 27, 1863, Stats. 1863, p. 627.

§ 601. NO MEMBER TO TRANSFER MEMBERSHIP, ETC. No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided.

History: Enacted March 21, 1872.

§ 602. RELIGIOUS SOCIETY MAY BECOME A CORPORATION SOLE. Whenever the rules, regulations, or discipline of any religious denomination, society, or church so require, for the administration of the temporalities thereof, and the management of the estate and property thereof,

it shall be lawful for the bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a sole corporation, in the manner prescribed in this title, as nearly as may be, and with all the powers and duties, and for the uses and purposes in this title provided for religious incorporations, and subject to all the conditions, limitations, and provisions in said title prescribed.

[Powers.] Every corporation sole shall, however, for the purposes of the trust, have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend, in all courts and places, in all matters and proceedings whatever, and shall have authority to borrow money, and give promissory notes therefor, and to secure the payment thereof by mortgage or other lien upon property, real or personal; to buy, sell, lease, mortgage, and in every way deal in real and personal property in the same manner that a natural person may, and without the order of any court; to receive bequests and devises for its own use or upon trusts to the same extent as natural persons may; and to appoint attorneys in fact.

[Articles of incorporation to set forth, what.] The articles of incorporation to be filed shall set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder is required by the rules, regulations, or discipline of such denomination, society, or church to be filled, which statement shall be verified by affidavit, and for proof of the appointment or election of such bishop, chief priest, or presiding elder, or of any succeeding incumbent of such corporation, it shall be sufficient to record with the clerk of the county in which such bishop, chief priest, or presiding elder resides, the original or a copy of his commission, or certificate, or letters of election or appointment, duly attested; provided, all property held by such bishop, chief priest, or presiding elder shall be in trust for the use, purpose, and behoof of his religious denomination, society, or church.

[Certain limitation does not apply.] The limitation in section five hundred and ninety-five shall not apply to corporations formed under this section, when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes. Any judge of the superior court in the county in which any corporation is formed under this chapter shall at all times have access to the books of such corporation.

[Continuation of corporation sole.] Any corporation sole heretofore organized and existing under the laws of this state may elect to continue its existence under this title by filing a certificate to that effect, under its corporate seal and the hand of its incumbent, or amended articles of incorporation, in the form required by this title, and as prescribed by section two hundred and eighty-seven of this code; and from and after the filing of such certificate or amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities, and provisions in this title expressed.

History: Enacted March 30, 1878, Code Amdts. 1877-8, p. 84; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 6; March 11, 1897, Stats. and Amdts. 1897, p. 101.

§ 602a. **CORPORATION SOLE, CONTINUOUS EXISTENCE.** Every corporation sole shall have continued succession and continuous existence during the term for which it is organized to exist, notwithstanding vacancies in the incumbency thereof, and during the period of any such vacancy such corporation sole shall have the same capacity and right to receive and take any gift, bequest, devise or conveyance of property, either as grantee for its own use, or as trustee, and to be or be made the beneficiary of a trust, as though there were no vacancy. No agency created by a corporation sole by a written instrument which in express terms provides that the agency thereby created shall not be terminated by a vacancy in the incumbency of such corporation,

shall be terminated or affected by the death of the incumbent of such corporation or by a vacancy in the incumbency thereof, however caused.

History: Enacted March 21, 1907, Stats. and Amdts. 1907, p. 836, Kerr's Stats. and Amdts. 1906-7, p. 415. **In effect** immediately.

§ 603. INCORPORATION OF RELIGIOUS SOCIETY. Any religious association or body of this state, composed of constituent churches, parishes, congregations, societies or missions which have a common convention, synod, council, assembly or conference, may incorporate under the provisions of this title.

The articles of incorporation shall set forth the proceedings authorizing the incorporation of such association, the time and place at which they were had, the manner in which, and the terms of which, the directors or trustees named in the articles of incorporation were chosen, and that said proceedings were in accordance with the constitution, by-laws, discipline, canons, rules and regulations of such association.

The articles of incorporation need be subscribed and acknowledged only by the presiding officer, and clerk, scribe, or secretary of such association; but they must make affidavit, which shall be appended to the articles, that they subscribed and acknowledged the articles by authority of such association, and that the statements therein contained are true to the best of their knowledge, information and belief.

History: Former section enacted March 12, 1885, Stats. and Amdts. 1885, p. 109; sought to be repealed, it is thought, by § 604, subsequently enacted; repealed and present section enacted May 1, 1911, Stats. and Amdts. 1911, p. 1435.

§ 604. HEAD OFFICE, ANNUAL ELECTION, ETC. Any corporation organized under section six hundred and three, or under section six hundred and three or section six hundred and four as they existed before this amendment,

must maintain its head office at the place where, as set forth in its articles of incorporation, its principal business is to be transacted; but may provide in its by-laws that the annual meeting and annual election shall be held at such other place as may from time to time be designated by the directors or trustees.

Any such corporation may hold and administer not only the common property, funds, and money of such corporation, but also the property, funds, and money of any constituent church, parish, congregation, society, or mission; and in so far as the land held by any such corporation is held or used for church, hospital, school, college, asylum, parsonage, or cemetery purposes, the limitation declared in section five hundred and ninety-five shall not apply.

History: Enacted March 20, 1903, Stats. and Amdts. 1903, p. 252; amended May 1, 1911, Stats. and Amdts. 1911, p. 1435.

§ 604a. **FORMATION OF RELIGIOUS CORPORATIONS. DIRECTORS.** For the administration of the temporalities, and for the management of the property and estate of any church, diocese, synod, or district or other organization of such church, or for the administration of the temporalities, and for the management of the property and estate of any religious society or order, community, or other organization of said religious society or order, any church, diocese, synod, or other organization of such church, or any community or other council, or other organization of any such religious society or order, or of any community or other organization of such religious society or order, may elect directors and become an incorporation in the manner prescribed in this title, and with all the powers and duties and for the uses and purposes in this title provided for benevolent or religious incorporations, and subject to all the limitations and provisions in said title prescribed, except as otherwise provided in this section;

[By-laws.] Provided, that directors of any such incorporation may be elected and by-laws for its government may be made and amended in accordance with the constitution, by-laws, discipline, rules and regulations of such church, diocese, synod, or district or other organization of such church, or in accordance with the constitution, by-laws, discipline, rules and regulations of such religious society or order, or of any community, or other organization of such religious society or order, at any meeting;

[Attesting certificate of incorporation.] And provided, the certificate of incorporation and of the election of directors to be filed shall be sufficiently attested by the signatures of the presiding officer, president, or other head, and acting secretary of such church, diocese, synod or other organization of such church, or of the community or other council, or other organization of such society or order, and that the limitations of section five hundred ninety-five shall not apply to corporations formed under this section when land is held or used for churches, hospitals, schools, colleges, asylums, or parsonages.

[Powers.] Every corporation formed pursuant to the provisions of this section shall have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend in all courts and places in all matters and proceedings whatsoever, and shall have authority to borrow money, give promissory notes therefor, and secure the payment thereof by mortgage or other lien upon property, real or personal, and may buy, sell, lease, mortgage and deal in real and personal property in the same manner that a natural person may, subject, however, to the provisions of section five hundred and ninety-eight of this code; and may receive bequests and devises for its own use, or upon trusts, to the same extent as a natural per-

son, subject, however, to the provisions of section thirteen hundred thirteen of the Civil Code of the State of California, and may appoint attorneys in fact.

History: Enacted June 10, 1913, Stats. and Amdts. 1913, p. 566. **In effect** August 10, 1913.

§ 605. **CONSOLIDATION OF CORPORATIONS.** Any corporation now or hereafter organized for purposes other than profit, may consolidate with any other like association or associations, or corporation or corporations, created either under the laws of the State of California, or under the laws of any other state or territory, so as to form a new or consolidated corporation, in such manner as may be authorized by the respective boards of directors or trustees of such associations or corporations by resolution adopted at meetings of the respective boards called for that purpose.

The resolution to be adopted by each of the respective boards shall state the names of all the corporations or associations to be united by the consolidation, the name of the state or territory under the laws of which they are created or organized, and the dates of their respective incorporation, the name by which the new or consolidated corporation is to be called or known, the purposes for which it is to be formed, the place where its principal business is to be transacted, the term for which it is to exist, the number of its directors or trustees, and the names and residences of those who are appointed to act as such for the first year, and shall designate three or more persons by whom articles of incorporation of the new or consolidated corporation shall be subscribed and filed in compliance with this section.

Articles of incorporation of the new or consolidated corporation shall be subscribed and acknowledged by the persons so designated as last aforesaid in the manner required by section two hundred and ninety-two of this code. Said articles shall contain and set forth all the matters required by section two hundred and ninety of this code, and in addi-

tion thereto there shall be attached to said articles copies of the aforesaid resolution of the several associations or corporations uniting in the consolidation, certified by the respective secretaries of such associations or corporations under the corporate seals thereof; and the said articles of incorporation shall in the body thereof refer to the said resolutions and to the certified copies thereof so attached, and by such reference make the said certified copies a part of the said articles.

The said articles of incorporation shall be filed in the office of the county clerk of the county where the principal business of the new or consolidated corporation is to be transacted, and a certified copy thereof in the office of the secretary of state, in the manner required by this code for the filing of original articles of incorporation; and thereupon the secretary of state shall issue to the corporation, over the great seal of the state, a certificate in manner and form as provided by section two hundred and ninety-six of this code.

From and after the filing of such certified copy of the articles of incorporation with the secretary of state the former associations or corporations uniting in the consolidation and comprising the component parts of the new or consolidated corporation shall cease to exist, and the new or consolidated corporation shall succeed to all the rights, duties and powers of the component associations or corporations, and shall be possessed of all the rights, duties and powers set forth in its articles of incorporation not inconsistent with this title, and shall be subject to all the liabilities and obligations of the former component associations or corporations, and shall succeed to and become vested with all the property thereof, both real and personal, of every name and nature, and may make by-laws and do all things permitted by this title.

History: Original section providing for consolidation of debts, enacted March 20, 1903, Stats. and Amdts. 1903, p. 252; present section enacted as an amendment April 26, 1909, Stats. and Amdts. 1909, p. 1094.

[This is a new title added by Act March 21, 1905 (Stats. and Amdts. 1905, pp. 590-592), and is a re-enactment of a new title added by Code Commission, Act March 16, 1901 (Stats. and Amdts. 1900-1, pp. 382-384, 429), which was held unconstitutional, see history, § 4 ante. The title is a codification of Act 1874, Stats. 1873-4, p. 499, and Act 1876, Stats. 1875-6, p. 830.]

TITLE XIIa.

SOCIETIES FOR THE PREVENTION OF CRUELTY TO CHILDREN AND ANIMALS.

§ 607. Formation of [humane] corporations.

§ 607a. Power of to receive and dispose of property. [Amount.]

§ 607b. Complaints for violating any law relating to children or animals.

§ 607c. Magistrates and police officers to aid the corporation and its officers.

§ 607d. Pre-existing corporations. [Title extends to.]

§ 607e. Compensation of.

§ 607f. Appointment of humane officers.

§ 607g. Children who may be arrested and brought before a court or magistrate for examination.

§ 607. FORMATION OF [HUMANE] CORPORATIONS. Corporations may be formed by any number of persons not less than five, a majority of whom must be citizens and residents of this state, under the general provisions of this code, for the purpose of the prevention of cruelty to children or animals, or both.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 590; see introductory note to this title.

§ 607a. POWER TO RECEIVE AND DISPOSE OF PROPERTY. [AMOUNT.] Every such corporation may take and hold, by gift, purchase, devise, or bequest, any

property, real or personal, and dispose of the same at its pleasure; but it must not hold real property the annual income of which exceeds fifty thousand dollars.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 590; see introductory note to this title.

§ 607b. COMPLAINTS FOR VIOLATING ANY LAW RELATING TO CHILDREN OR ANIMALS. Any such corporation, or any member or officer thereof, may prefer a complaint against any person or persons, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children or animals, and may aid in the prosecution of any such offender before such court or magistrate in any proceeding taken.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 590; see introductory note to this title.

§ 607c. MAGISTRATES AND POLICE OFFICERS TO AID THE CORPORATION AND ITS OFFICERS. All magistrates, constables, sheriffs, and officers of police must, as occasion may require, aid any such corporation, its officers, members, and agents, in the enforcement of all laws which are now or may be hereafter enacted relating to or affecting children or animals.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 590; see introductory note to this title.

§ 607d. PRE-EXISTING CORPORATIONS. [TITLE EXTENDS TO.] The provisions of this title extend to all corporations heretofore formed and existing for the prevention of cruelty to children or animals, but do not extend or apply to any association, society, or corporation which uses or specifies a name or style the same, or substantially the

same, as that of any previously existing society or corporation in this state organized for a like purpose.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 590; see introductory note to this title.

§ 607e. **COMPENSATION OF.** Every society, incorporated and organized for the prevention of cruelty to animals, or for the prevention of cruelty to children, may, in each city, or city and county, or county, where such society exists, while actively engaged in enforcing the provisions of the laws of this state, now or hereafter enacted, for the prevention of cruelty to animals or children, or arresting, or prosecuting offenders thereunder or preventing cruelty to animals or children, be paid as compensation therefor, from the city or county, or city and county general fund, by the board of supervisors or other governing body thereof, a sum not exceeding five hundred dollars per calendar month, in the same manner as other claims against said city or county, or city and county, are paid.

[Urgency measure.] Sec. 2. This act is hereby declared to be an urgency measure within the meaning of section 1, article IV of the constitution, and is deemed necessary for the immediate preservation of the public peace and safety. The following is a statement of facts constituting such necessity: Section six hundred and seven **e** of the Civil Code permits societies organized for the prevention of cruelty to animals to make arrests, carry on prosecutions and collect fines and under the provisions of this section numerous societies have been organized and are being operated in such a manner as to be a menace to the public peace and safety. Arrests are being made and property seized without prosecution of the charges made, citizens are being forced to pay tribute to outlaw societies to escape persecution, and peace officers are urging the immediate withdrawal of the right of

these societies to collect fines because of their greatly increased activity in these practices, pending the time when this bill may bcome law.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 591; amended March 20, 1909, Stats. and Amdts. 1909, p. 574; March 24, 1911, Stats. and Amdts. 1911, p. 487; May 30, 1913, Stats. and Amdts. 1913, p. 638. **In effect** immediately.

§ 607f. APPOINTMENT OF HUMANE OFFICERS. Any such corporation incorporated for the purpose of the prevention of cruelty to animals may by resolution of its board of directors or trustees duly entered on its minutes appoint any number of its members, who shall be citizens of the State of California as humane officers. Each appointment shall be by separate resolution. Such resolution shall state the full name and place of residence and the business or occupation of the person so appointed and the fact that he is a citizen of the State of California and shall also designate the number of the badge to be allotted to such officer. Every person so appointed must within ten days after his appointment present to the judge of the superior court in and for the county or city and county in which the corporation appointing such officer has its principal place of business a copy of such resolution duly certified to be correct by the president and secretary of such corporation and attested by its seal.

[Approval of judge.] The judge shall examine such appointee as to his qualifications and fitness to act as such officer and, if he approves such appointment, shall indorse his approval on said certified copy of said resolution. Said appointee shall thereupon and within said period of ten days file said certified copy with the judge's approval indorsed thereon in the office of the county clerk of said county or city and county and shall at the same time take and subscribe the oath of office prescribed for constables or other peace officers.

["Record of humane officers."] The county clerk shall thereupon immediately enter in a book to be kept in his office and designated "Record of Humane Officers" the name of such officer, the number of his badge, the name of the corporation appointing him and the date of such filing. At the time of such filing the county clerk shall collect from such officer a fee of fifty cents, which shall be in full for all services to be performed by the county clerk under the provisions of this section.

[Revocation of appointment.] The corporation appointing such officer may revoke such appointment at any time by resolution of its board of directors or trustees, a duly certified copy of which resolution must within five days after its adoption be filed in the office of the county clerk in which the appointment of such officer is recorded and upon such filing the county clerk shall enter the fact of such revocation and the date of the filing thereof opposite the name of such officer in such record of humane officers.

[Powers of officer.] Such humane officers after qualifying as above provided shall have power at all places within the state lawfully to interfere to prevent the perpetration of any act of cruelty upon any dumb animal and may use such force as may be necessary to prevent the same and to that end may summon to their aid any bystander. They may make arrests for the violation of any penal law of this state relating to or affecting animals in the same manner as a constable or other peace officer and may carry such weapons as peace officers are authorized to carry; except that in cities and counties and cities of the first and first and one half classes no such humane officer shall carry any such weapon unless permission in writing so to do has first been granted to him by the board of police commissioners of such city or city and county. Every humane officer must when making such arrests exhibit and expose a suitable badge to be adopted by the corporation appointing him which shall bear its name and a number.

[Resisting officer.] Any person resisting a humane officer in the performance of his duty as provided in this section shall be guilty of a misdemeanor.

Any person who has not been appointed and qualified as a humane officer as provided in this section, or whose appointment has been revoked as provided in this section, who shall represent himself to be or shall attempt to act as such officer shall be guilty of a misdemeanor.

[False certificate.] Any officer of such corporation who shall knowingly or wilfully sign or issue any certificate provided for in this section, which shall be in any material respect false or untrue, shall be guilty of a misdemeanor.

[Repealing clause.] Sec. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

History: Enacted March 21. 1905, Stats. and Amdts. 1905, p. 591; amended February 20. 1909, Stats. and Amdts. 1909, p. 33; May 30, 1913, Stats. and Amdts. 1913, p. 511. **In effect** August 10, 1913.

§ 607g. **CHILDREN WHO MAY BE ARRESTED AND BROUGHT BEFORE A COURT OR MAGISTRATE FOR EXAMINATION.** Any child under the age of sixteen years that comes within any of the following descriptions named:

1. **Who is found begging** or receiving or gathering alms (whether actually begging, or under the pretext of selling or offering for sale anything), or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms;

2. **Who is found wandering** and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence;

3. **Who is found destitute,** either being an orphan, or having a vicious parent who is undergoing penal servitude or imprisonment;

4. **Who frequents the company of reputed thieves or pros-**

titutes, or houses of prostitution or assignation, or dance-houses, concert saloons, theaters, or variety halls, or other places of amusement where spirituous, malt, or vinous liquors are sold, without parent or guardian;

5. Who is engaged or used for or in any business, exhibition, vocation, or purpose, in violation of any law of this state;—

Must be arrested and brought before a court or magistrate, and when, upon examination before such court or magistrate, it appears that any such child has been engaged in any of the aforesaid acts, or comes within any of the aforesaid descriptions; or when, upon the examination or conviction of any person having the custody of a child, of a criminal assault upon it, the court or magistrate before whom such examination or conviction is had deems it desirable for the welfare of such child that the person so examined or convicted should be deprived of its custody thereafter;

[Order of court upon examination—Commitment of child.] Such court or magistrate, when it deems it expedient for the welfare of such child, may commit such child to an orphan asylum, corporation, or society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now is or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children.

[Power to institute proceedings.] Any corporation, organized under this title, or now existing, for the prevention of cruelty to children, or any officer or member thereof, may institute proceedings under this section for the welfare of any such child.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 591-592; see introductory note to this title.

TITLE XIII.

CEMETERY CORPORATIONS.

§ 608. How much land may be held, and how disposed of.
§ 609. Who are members eligible to vote and hold office.
§ 610. May hold personal property, to what amount. How disposed of.
§ 611. May issue bonds to pay for grounds. Proceeds of sale, how disposed of.
§ 612. May take and hold title to what, and how.
§ 613. When burial lot inalienable. Who may not be buried in lot.
§ 614. Lot-owners previous to purchase to be members of the corporation.
§ 615. May sell lands, when.
§ 616. May take and hold property in trust. Application of income.

§ 608. HOW MUCH LAND MAY BE HELD, AND HOW DISPOSED OF. Corporations organized to establish and maintain cemeteries may take, by purchase, donation, or devise, land, not exceeding three hundred and twenty acres in extent, in the county wherein their articles of incorporation are filed, or in an adjoining county, and may employ any surplus moneys in the treasury thereof for such purpose; such lands to be held and occupied exclusively as a cemetery for the burial of the dead.

The lands must be surveyed and subdivided into lots or plats, avenues, and walks, under order of the directors, and a map thereof filed in the office of the recorder of the county wherein the lands are situated.

[Sale, conditions, and restrictions.] Thereafter, upon such terms and subject to such conditions and restrictions, to be inserted in the conveyances, as the by-laws or directors may

prescribe, the directors may sell and convey the lots or plats to purchasers.

History: Enacted March 21, 1872, founded upon § 4, Act April 18, 1859, Stats. 1859, p. 282; amended March 20, 1891, Stats. and Amdts. 1891, p. 180. **In effect** March 20, 1891.

§ 609. **WHO ARE MEMBERS ELIGIBLE TO VOTE AND HOLD OFFICE.** Every person of full age who is proprietor of a lot or plat in the cemetery of the corporation, containing not less than two hundred square feet of land, or, if there be more than one proprietor of any such lot, then such of the proprietors as the majority of joint proprietors designate, may, in person or by proxy, cast one vote at all elections had by the corporation for directors or any other purpose, and is eligible to any office of the corporation. At each annual meeting or election, the directors must make a report to the proprietors of all their doings, and of the management and condition of the property and concerns of the corporation.

History: Enacted March 21, 1872, founded upon § 5, Act April 18, 1859, Stats. 1859, pp. 282-283.

§ 610. **MAY HOLD PERSONAL PROPERTY, TO WHAT AMOUNT. HOW DISPOSED OF.** Such corporations may hold personal property to an amount not exceeding five thousand dollars, in addition to the surplus remaining from the sales of lots or plats after the payments required in the succeeding section. Such surplus must be disposed of in the improvement, embellishment, and preservation of the cemetery, and paying incidental expenses of the corporation, and in no other manner.

History: Enacted March 21, 1872, founded upon § 4, Act April 18, 1859, Stats. 1859, p. 282.

§ 611. **MAY ISSUE BONDS TO PAY FOR GROUNDS. PROCEEDS OF SALE, HOW DISPOSED OF.** Such corporations may issue their bonds, bearing interest not exceed-

ing twelve per cent per annum, for the purchase of lands for their cemeteries, payable out of the proceeds of the cemetery and not otherwise; sixty per cent of the proceeds of sales of lots, plats, and graves must be applied at least every three months to the payment of the bonds and interest. Such corporations may also agree with the person or persons from whom cemetery lands shall be purchased, to pay for such lands, as the purchase price thereof, any specified share or portion, not exceeding one half, of the proceeds of all sales of lots or plats made from such lands; such payment to be made at such intervals as may be agreed upon. In all cases where cemetery lands shall be purchased and agreed to be paid for in the manner last provided, the prices for lots or plats specified in the by-laws, rules, or regulations first adopted by such association, or prescribed in the agreement between the cemetery and the person or persons from whom the cemetery lands were purchased, shall not be changed without the written consent of a majority in interest of the persons from whom such lands were purchased, their heirs, representatives, or assigns.

History: Enacted March 21, 1872, founded upon § 7, Act April 18, 1859, Stats. 1859, p. 281, as amended Act January 13, 1864, Stats. 1863-4, p. 12, and Act April 16, 1880, Code Amdts. 1880 (C. C. pt.), p. 12. **In effect** April 16, 1880.

§ 612. **MAY TAKE AND HOLD TITLE TO WHAT, AND HOW.** Any corporation organized to establish and maintain, or to improve, a cemetery, may take and hold title to any cemetery lot, plot or grave, devised or given to it in trust for the specific purpose of perpetually caring for the same.

History: Enacted March 21, 1872, founded upon § 9, Act April 18, 1859, Stats. 1859, p. 284; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 384, held unconstitutional, see history, § 4 ante; amended March 26, 1901, Stats. and Amdts. 1900-1, p. 814.

§ 613. **WHEN BURIAL LOT INALIENABLE. WHO MAY NOT BE BURIED IN LOT.** Whenever an interment is made in any lot or plat transferred to individual owners by the corporation, the same thereby becomes forever inalienable, and descends in regular line of succession to the heirs at law of the owner. When there are several owners of interests in such lot or plat, one or more may acquire by purchase the interest of others interested in the fee simple title thereof, but no one not an owner acquires interest or right of burial therein by purchase; nor must any one be buried in any such lot or plat not at the time owning an interest therein, or who is not a relative of such owner, or of his wife, except by consent of all jointly interested;

[Alienability revived, how.] Provided, however, that when all the bodies buried in any such lot shall have been removed therefrom, with the consent of the owners of such lot, it shall be lawful for the then owners of such lot to sell and transfer the same by deed; and any such sale and transfer heretofore made is hereby declared to be valid and effectual to transfer the title to the purchaser, any law to the contrary thereof notwithstanding.

History: Enacted March 21, 1872, founded upon § 11, Act April 18, 1859, Stats. 1859, p. 284; amended February 10, 1885, Code Amdts. 1885, pp. 1-2; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 385, held unconstitutional, see history, § 4 ante.

§ 614. **LOT-OWNERS PREVIOUS TO PURCHASE TO BE MEMBERS OF THE CORPORATION.** When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial-ground, those who are lot-owners at the time of the purchase continue to own the same, and are members of the corporation, with all the privileges a purchase of a lot from the corporation confers.

History: Enacted March 21, 1872, founded upon § 12, Act April 18, 1859, Stats. 1859, p. 285.

§ 615. **MAY SELL LANDS, WHEN.** Cemetery corporations may sell lands held by them upon obtaining an order for that purpose from the superior court of the county where the lands are situated. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to sell has been given by publication in such manner and for such time as the court has directed, and that the lands are not required for and are not in use for burial purposes, and that it is for the interest of the corporation that such lands be sold. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise.

History: Enacted March 4, 1889, Stats. and Amdts. 1889, p. 61. **In effect** March 4, 1889.

§ 616. **MAY TAKE AND HOLD PROPERTY IN TRUST. APPLICATION OF INCOME.** Any corporation organized to establish and maintain, or to improve, a cemetery, may take and hold any property bequeathed, granted, or given to it in trust, to apply the proceeds or income thereof to any and all of the following purposes:

[Purposes for which may hold.] To the improvement or embellishment of such cemetery or of any lot therein; or to the erection, renewal, repair, or preservation of any monument, fence, or other structure in such cemetery; or to the planting or cultivation of trees, shrubs, or plants in or around such cemetery, or any lot therein; or to the improving, ornamenting, or embellishing of such cemetery, or any lot therein, in any other mode or manner not inconsistent with the purposes for which such cemetery was established or is being maintained.

[Investment of proceeds and income, in what.] Such property and the proceeds or income thereof shall be invested and reinvested in bonds of the United States, or of this state, or of any municipality of this state or in first

mortgages on real estate, or in centrally located income-producing improved real estate in any city, or city and county in this state, if such investment is not repugnant to the terms of the bequest, grant or gift.

History: Enacted March 26, 1895, Stats. and Amdts. 1895, p. 162; amended March 25, 1901, Stats. and Amdts. 1900-1, p. 814.

TITLE XIV.

AGRICULTURAL FAIR CORPORATIONS.

§ 620. May acquire and hold real estate, how much.
§ 621. Shall not contract debts or liabilities exceeding amount in treasury.
§ 622. Not for profit. May fix fee, etc., for membership.

§ 620. MAY ACQUIRE AND HOLD REAL ESTATE, HOW MUCH. Agricultural fair corporations may purchase, hold, or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon, and may sell, lease, or otherwise dispose of the same, at pleasure. This real estate must be held for the purpose of erecting buildings and other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stockraising, and general domestic industry.

History: Enacted March 21, 1872, founded upon § 2, Act March 12, 1859, Stats. 1859, p. 105.

§ 621. SHALL NOT CONTRACT DEBTS OR LIABILITIES EXCEEDING AMOUNT IN TREASURY. Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract, except for the purchase of real property, for which they may create a debt not exceeding five thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section.

History: Enacted March 21, 1872, founded upon § 5, Act March 12, 1859, Stats. 1859, p. 105.

§ 622. NOT FOR PROFIT. MAY FIX FEE, ETC., FOR MEMBERSHIP. Agricultural fair corporations are not conducted for profit, and have no capital stock or income other than that derived from charges to exhibitors and fees for membership, which charges, together with the term of membership and mode of acquiring the same, must be provided for in their by-laws. Such fees must never be greater than to raise sufficient revenue to discharge the debt for the real estate and the improvements thereon, and to defray the current expenses of fairs.

History: Enacted March 21, 1872, founded upon § 4, Act March 12, 1859, Stats. 1859, p. 105.

[Title XV, and each and every section thereof, was repealed by Act March 21, 1905 (Stats. and Amdts. 1905, p. 592), and a new title substituted therefor, Stats. and Amdts. 1905, pp. 593-594. This substituted title is an exact reproduction, with the addition of § 630a, of the substitution by the Code Commission, Act March 16, 1901 (Stats. and Amdts. 1900-1, pp. 385-386, 429), which was held unconstitutional, see history , § 4 ante.]

TITLE XV.

CORPORATIONS TO FURNISH LIGHT FOR PUBLIC USE.

§ 629. Companies must supply gas, electricity, etc., to buildings within one hundred feet of the main.
§ 630. When corporations may refuse to supply gas.
§ 630a. When corporations may refuse to supply electric current for light.
§ 631. Right to enter buildings for inspection.
§ 632. Right to shut off supply of gas or electricity.

§ 629. COMPANIES MUST SUPPLY GAS, ELECTRICITY, ETC., TO BUILDINGS WITHIN ONE HUNDRED FEET OF THE MAIN. Upon the application in writing of the owner or occupant of any building or premises distant not more than one hundred feet from any gas or steam main, or direct or primary wire of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas, electricity, steam or heat as required for such building or premises, and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas, electricity, steam or heat required, it must pay to the applicant the sum of fifty dollars as liquidated damages and five dollars per day, as liquidated damages for every day such refusal or neglect continues thereafter.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 593; amended April 12, 1911, Stats. and Amdts. 1911, p. 887.

§ 630. **WHEN CORPORATIONS MAY REFUSE TO SUPPLY GAS.** No corporation is required to lay service pipe where serious obstacles exist to laying it, unless the applicant, if required, deposits in advance, with the corporation, a sum of money sufficient to pay the cost of laying such service pipe, or his proportion thereof.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 593; see introductory note to this title.

§ 630a. **WHEN CORPORATIONS MAY REFUSE TO SUPPLY ELECTRIC CURRENT FOR LIGHT.** No corporation is required to construct lines for the supply of electric current for light where serious obstacles exist, nor shall such corporation be required to supply such current from a direct wire at a distance too remote from the generating station, to insure a sufficient supply; nor is such corporation required to supply electric current for light from a primary wire carrying current of high voltage, unless the applicant deposit, in advance, a sum of money sufficient to pay the actual costs of such construction and for the appliances required to supply electric current with safety at the proper voltage.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 593; see introductory note to this title.

§ 631. **RIGHT TO ENTER BUILDINGS FOR INSPECTION.** Any owner, manager or superintendent of gas or electric light works, or agent of such owner, manager, or superintendent, exhibiting written authority, signed by such owner, manager or superintendent, or any agent of a gas or electric light corporation exhibiting written authority signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas or electricity supplied by such owner or corporation, to inspect the gas meters or electric meters therein to ascertain the quantity of

gas or electricity supplied or consumed. Every owner or occupant of such building who hinders or prevents such entry or inspection must pay to the owner or corporation the sum of fifty dollars as liquidated damages.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 593; see introductory note to this title.

§ 632. **RIGHT TO SHUT OFF SUPPLY OF GAS OR ELECTRICITY.** All gas or electric light corporations may shut off the supply of gas or electricity from any person who neglects or refuses to pay for the gas or electricity supplied, or the rent of any meter, pipes, wires, fittings or appliances, provided by the corporation, as required by his contract; and for the purpose of shutting off the gas or electricity in such case any employee of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, of any day and remove therefrom any property of the corporation used in supplying gas or electricity.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 594; see introductory note to this title.

[The original Title XVI, Part IV, of Division One, embracing §§ 639-648, was repealed by Act March 31, 1891 (Stats. and Amdts. 1891, p. 252), except as to building and loan associations then organized and doing business, and enacting in their place and stead §§ 633-648½, and subjecting existing building and loan associations theretofore existing to examination by the bank commissioners. By Act March 23, 1907 (Stats. and Amdts. 1907, p. 923, Kerr's Stats. and Amdts. 1906-7, p. 416), this title "and each and every part and section thereof, is hereby repealed, and a new title XVI is hereby enacted and substituted to take the place thereof in said code, to read as follows":]

TITLE XVI.

BUILDING AND LOAN ASSOCIATIONS.

§ 633. Formation, powers, and organization.
§ 634. Capital stock [Dues, shares, etc.].
§ 635. Retiring free shares.
§ 636. Maturity of stock.
§ 637. Loans. Prohibitions. Penalties.
§ 638. Security for loans. Interest.
§ 638a. Withdrawal or surrender of stock, notice [repealed].
§ 639. Arrears in payments. Defaults. Forfeitures.
§ 640. Purchase of real estate.
§ 641. Profits and losses.
§ 642. Withdrawals.
§ 642a. Receipts to be applied to demands unpaid for year.
§ 643. Membership.
§ 644. State supervision and control.
§ 645. Annual report.
§ 646. Building and loan associations must make deposit.
§ 647. Investment in and loans upon bonds.
§ 648. Building and loan association. Definition of term.
§ 648a. Building and loan associations. Formation with or without guarantee.

§ 633. FORMATION, POWERS, AND ORGANIZATION. Building and loan associations as hereinafter in this title defined, shall have power to receive money and accumulate funds to be loaned, and to loan the same to their shareholders, investors and others; to permit shareholders

and investors to withdraw part or all of their payments, investments or stock deposits, and to prescribe the terms and conditions of such withdrawal; to cancel shares of stock, the payments on which have been withdrawn; to receive money and to execute certificates therefor, which must specify the date, amount, rate of interest, and when the principal and interest are payable, and also the withdrawal value thereof at the end of each year; to borrow money for the purpose of making loans and of paying withdrawals and maturities; and shall have such further powers as may be specifically set forth under this title; provided, however, that no such association shall, at any time, have or carry upon its books, for any member or investor, any demand, commercial or checking account or any credit to be withdrawn upon the presentation of any negotiable check or draft.

[Purposes for which formed.] Every such corporation hereafter formed, in setting forth for the purposes for which it is formed, shall state, in its articles of incorporation, that it is formed to encourage industry, frugality, home building, and savings among its shareholders and members; the accumulation of savings; the loaning to its shareholders and members of the moneys or funds so accumulated, with the profits and earnings thereon, and the repayment to each of his savings and profits, whenever they have accumulated to the full par value of the shares, or at any time when he shall desire the same or when the corporation shall desire to repay the same, as it may be provided in the by-laws; and shall also state that it is formed for all the purposes specified in this title.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, pp. 252-253; see introductory not to this title; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 923, Kerr's Stats. and Amdts. 1906-7, p. 416; June 10, 1913, Stats. and Amdts. 1913, p. 552. **In effect** August 10, 1913. **Repealing clause** post § 648.

§ 634. CAPITAL STOCK. [DUES, SHARES, ETC.] The capital of every such corporation shall be divided into shares of the matured or par value of one hundred or two hundred dollars each, as provided by the articles of incorporation, and shall be paid in by the subscribers in the manner provided by the by-laws. All such payments shall be called dues. Certificates shall be issued to each shareholder on the first payment of dues by him.

[Pledge shares—Free shares.] Shares pledged as security for the payment of a loan shall be called pledge shares, and all others, free shares. All shares matured and surrendered or canceled, shall become the property of the corporation and may be reissued.

[Capital accumulated in certain forms.] The capital shall consist of the accumulated dues together with the apportioned profits of the corporation, and shall be accumulated by the issuance of shares in "installment" form and, where the by-laws shall so provide, in any or all the following forms, viz: "full paid," "pass book or juvenile," and "guarantee."

[Installment shares either "serial" or "permanent." (a) Installment shares shall be either "serial" or "permanent" in form. When issued in "serial" form, the periodical dues on shares in each series shall commence with the date of the issue of such series and the holder must pay such dues and such amounts per share and at such times as the by-laws may provide, and such payments must continue on each share until, with the profits allotted thereto, it reaches its matured value or is withdrawn or canceled. On all such issues the dividends shall be apportioned or credited equally to each share in each series. No share of a prior series shall be issued after the issue of shares in a new series, except by way of transfer. Shares issued in "permanent" form may be issued at any time and the dividends thereon may be credited in the pass books of the members. Shares of either form may be issued in "classes" with a different periodical pay-

ment for each class designation, to be specified in the by-laws, and shall be issued with full participation in the profits subject to apportionment as dividends.

[Full paid shares.] (b) Full paid shares shall be shares upon which a single payment of dues amounting to one hundred or two hundred dollars per share shall be paid at the time of subscription and upon which the holder shall be entitled to either a full participation in the net profits or to an agreed rate of dividends not exceeding six per cent per annum, payable semiannually in cash, to be specified in the body of the certificate issued. All such shares may be issued in separate classes as to participation, under regulations to be provided in the by-laws and which must be fully set forth in or upon each certificate issued.

[Pass book or juvenile shares.] (c) Pass books or juvenile shares are shares which shall participate in the apportionment of net profits and be credited therewith at a rate not less than seventy-five nor more than ninety per centum of the rate apportioned to installment shares, as the by-laws shall determine, and upon which the dues may be paid in at such times and in such amounts as the holder thereof may elect until said shares reach their matured value or are withdrawn. Such shares shall be withdrawable under rules to be provided in the by-laws and fully set forth in the pass books issued. The matured value of this class of shares shall not exceed in volume twenty-five per centum of the matured value of all other shares in force. No membership fee, fine or forfeiture shall be chargeable against such shares.

[Guarantee stock.] (d) Guarantee stock shall be stock, provided by the by-laws, to be set apart and sold as a fixed, permanent or guarantee capital. When any such stock has been once so set apart, sold and issued, it shall thereafter remain as a fixed, permanent and guarantee capital, and shall be subjected to all the conditions and liabilities attaching to the paid in capital stock of other classes of corpora-

tions. Such guarantee stock shall protect and guarantee all other stockholders and creditors against any loss, and when once paid it must be kept unimpaired.

[Reserve fund ten per cent of liability.] (e) Every corporation specified in this title issuing installment or full paid investment certificates, or both, shall at all times have issued and fully paid for, either an amount of guarantee capital stock, or permanent non-withdrawable capital stock, or both such guarantee capital stock and permanent non-withdrawable capital stock, or a reserve fund equal to ten per cent of the aggregate amount of its liability on its said installment investment certificates and full paid up investment certificates; provided, however, that the aggregate of guarantee capital stock, or permanent non-withdrawable capital stock, or both such guarantee capital stock and permanent non-withdrawable capital stock, or a reserve fund, of every building and loan association issuing installment or full paid investment certificates, or both, must equal the following percentages of its investment certificate liabilities:

1. Ten per centum of any amount up to and including one million dollars.

2. Seven and one-half per centum of any amount in excess of one million dollars, up to and including two million dollars.

3. Five per centum of any amount in excess of two million dollars, up to and including five million dollars.

[May provide majority of directors, stockholders.] (f) Corporations specified in this title, issuing guaranteed stock, may provide in their by-laws that a majority of the board of directors shall be selected from the holders of such stock.

[Entrance or withdrawal fees.] (g) Every such corporation shall also have power, by its by-laws, to charge an entrance or withdrawal fee, for each share of stock it may issue, not exceeding one dollar on each share,

[Transfer fee.] And also to charge a transfer fee, not exceeding ten cents on each share, all of which fees shall be

accounted for by the corporation like other funds of the association. No other fee, charge or deduction shall ever be made or permitted to be made against any shareholder, or against any of his shares hereafter issued, or the dues paid in thereon for the purpose of creating a fund to be used in the payment of current or running expenses. (Amendment approved June 10, 1913; stats. 1913, p. 553. In effect August 10, 1913.)

History: Original section enacted March 21, 1891, Stats. and Amdts. 1891, p. 253; former section repealed and present section enacted March 23, 1907, Stats. and Amdts. 1907, p. 924, Kerr's Stats. and Amdts. 1906-7, p. 417; amended June 10, 1913, Stats. and Amdts. 1913, p. 553; May 3, 1915, Stats. and Amdts. 1915, p. 336. **In effect** August 8, 1915.

§ 635. RETIRING FREE SHARES. The directors may in their discretion, under the regulations prescribed by the by-laws, retire any free shares of stock, other than those of the guarantee stock, by enforcing the withdrawal thereof, but whenever the withdrawal of any shares is to be enforced, the holders thereof must be paid the amount actually paid in, and the full amount of earnings at the date of retirement; provided that shares of instalment stock shall not be forced out until after they shall have become four years old.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 254; see introductory note to this title; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 386, held unconstitutional, see history, § 593 ante, former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 925, Kerr's Stats. and Amdts. 1906-7, p. 418. **In effect** after July 1, 1907. **Repealing clause** post § 648.

§ 636. MATURITY OF STOCK. When any stock shall have reached its matured value, payment of dues thereon shall cease. Borrowing stockholders whose loans are fully paid shall have their securities released and returned to them. Holders of free shares of stock shall be paid the matured

value thereof out of the funds of the corporation, with interest at such rate as the by-laws shall provide, from the time the board of directors shall declare such shares to have been matured, until paid; but at no time shall more than one-half of the receipts of the corporation be applicable to the payment of matured shares without the consent of said board. The order of the payment of matured shares, if not otherwise determined by the by-laws, shall be in the numerical order of issuance.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 254; see introductory note to this title; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 925, Kerr's Stats. and Amdts. 1906-7, p. 418. **In effect** after July 1, 1907. **Repealing clause** post § 648.

§ 637. LOANS. PROHIBITIONS. PENALTIES. Loans may be made upon the "mutual plan" or upon the "definite contract plan." Loans made upon the mutual plan shall be accompanied by a pledge of shares having a matured or par value equal to the face of the loan. Definite contract loans shall be repayable in a definite number of equal periodical installments, to be named in the note or obligation, each in an amount sufficient for the aggregate of all to repay the principal of the loan together with interest on the unpaid periodical balances, within the time and at the rate agreed upon.

[Officers may not borrow.] It shall be unlawful for any director or officer of any corporation governed by this title, directly or indirectly, for himself, or as a partner or agent for others, to borrow any of the funds of such corporation, and any officer or director violating the provisions of this section shall be guilty of a felony. Any officer or director of any such corporation who consents on behalf of such corporation to make a loan to any officer or director of such corporation shall be guilty of a felony, and shall also be personally liable to the corporation for the full amount thereof.

[No loan on own guaranteed stock.] It shall be unlawful for any building and loan association, corporation or society operating under the provisions of this title to loan any of its funds upon any of its own guarantee stock or upon its permanent nonwithdrawable capital stock as security. Any officer or director of an association who shall make any such loan for and on behalf of any association shall be personally liable to the corporation for the full amount thereof, and shall also be deemed guilty of a felony.

[No loan on mining stock.] It shall be unlawful for any building and loan association, corporation or society, operating under the provisions of this title, to loan any of its funds upon the security of, or to invest any of its funds in any mining shares or mining stocks, or in the stocks or bonds of any corporation, other than in this title provided; and any officer or director who, on behalf of any such corporation, shall make any such loan or investment, or who shall consent thereto, shall be personally liable to the corporation for the whole amount of any such loan or investment, and shall also be guilty of a felony.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, pp. 254-255; see introductory note to this title; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 926, Kerr's Stats. and Amdts. 1906-7, p. 418; June 10, 1913, Stats. and Amdts. 1913, p. 551. **In effect** August 10, 1913. **Repealing clause** post § 648.

§ 638. **SECURITY FOR LOANS. INTEREST.** For every loan made a note or obligation must be executed by the borrower, secured by a first mortgage or deed of trust upon unencumbered real estate having an appraised value of not less than twenty-five per cent in excess of the face of the loan (except such loans as may be made upon the security of bonds specified in section six hundred and forty-seven); or in lieu of a mortgage or deed of trust, loans to the extent of not exceeding ninety per cent of the then withdrawable value, may be made upon the pledge of free shares

or certificates as security for their repayment. The board of directors may from time to time fix the rate of interest to be charged on loans. A borrower may at any time repay his loan together with interest or arrears due thereon and upon the surrender of the shares, or certificate pledged as security therefor.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 255; amended February 25, 1897, Stats. and Amdts. 1897, p. 30; March 11, 1901, Stats. and Amdts. 1900-1, p. 268; see introductory note to this title; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 926, Kerr's Stats. and Amdts. 1906-7, p. 419; June 10, 1913, Stats. and Amdts. 1913, p. 551. **In effect** August 10, 1913. **Repealing clause** post § 648.

§ 638a. WITHDRAWAL OR SURRENDER OF STOCK, NOTICE [repealed].

History: Original section enacted March 22, 1905, Stats. and Amdts. 1905, p. 753; repealed March 23, 1907, Stats. and Amdts. 1907, p. 923. **In effect** July 1, 1907.

§ 639. ARREARS IN PAYMENT. DEFAULTS. FORFEITURES. Whenever any nonborrowing member shall be six months in arrears in the payment of his dues upon free shares, the secretary may give him notice thereof in writing, and a statement of his arrearages, by mailing the same to him at his last post-office address given by him to the association; and if he shall not pay all arrearages within two months thereafter, the board of directors may, at their option, declare his shares forfeited, and at the time of such forfeiture, the withdrawal value thereof shall be determined and stated, and the defaulting member shall be entitled to withdraw the same without interest, upon such notice as shall be required of a withdrawing shareholder. Whenever a borrower shall be three months in arrears in the payment of his dues or interest or loan installments, the whole loan shall become due at the option of the board of directors, and

they may proceed to enforce collection upon the securities held by the association. The withdrawal value, at the time of exercising such option, of all shares pledged as collateral security, shall be applied to the payment of the loan, and said shares from that time shall be deemed surrendered to the association and canceled.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 255; see introductory note to this title; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 927, Kerr's Stats. and Amdts. 1906-7, p. 419. **In effect** after July 1, 1907. **Repealing clause** post § 648.

§ 640. **PURCHASE OF REAL ESTATE.** Any such association may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment, lien, or other encumbrance, or in which it may have an interest, and may sell, convey, lease, or mortgage the same at pleasure to any person or persons.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 255; see introductory note to this title; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 927, Kerr's Stats. and Amdts. 1906-7, p. 420. **In effect** after July 1, 1907. **Repealing clause** post § 648.

§ 641. **PROFITS AND LOSSES.** Profits and losses shall be apportioned at least annually, and shall be apportioned to all shares in each class at the time of such apportionment, according to the actual or book value thereof. If the guarantee capital herein provided for, if any there be, together with the reserve fund, or if the reserve fund, where there be no guarantee capital, shall not equal five per cent of the outstanding loans at the time of each apportionment of profits, the directors shall set aside, as a reserve fund, not less than five per cent of the net profits accruing since the last prior apportionment, and shall continue so to do until said fund shall amount to at least five per cent of the loans in force, at which figure said fund shall thereafter be maintained. Said

reserve fund shall at all times be available to meet losses arising from any source not heretofore provided to be assumed by the guarantee capital.

[Dividend fund—Reserve.] Every such corporation having a paid-in guarantee capital stock, may provide in their by-laws, that an amount not exceeding one per cent per annum on the average loans in force, shall be set aside from and out of the net profits, at each annual distribution thereof, —or a proportionate amount at each semi-annual distribution, —from which to declare dividends on and provide a reserve fund that shall be specially applicable thereto. At least one-tenth of the amount so set aside shall be carried to such reserve fund until the same shall amount to at least fifty per cent of the paid-in guarantee stock.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 255; see introductory note to this title; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 387, held unconstitutional, see history, § 593 ante; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 927, Kerr's Stats. and Amdts. 1906-7, p. 420. **In effect** after July 1, 1907. **Repealing clause** post § 648.

§ 642. WITHDRAWALS. A stockholder or investor, desiring to withdraw from any such corporation or to surrender a part or all of his stock, or investment certificate, may do so by giving thirty days notice, in writing, of his intention or desire so to do. On the expiration of such notice, he is entitled to receive the full amount paid in upon the stock or investment certificate surrendered, exclusive of the entrance or withdrawal fee, together with such proportion of the earnings thereon as the by-laws may provide, or as may be fixed by the board of directors; but not more than one-half of the monthly receipts in any one month must be applied to withdrawals for that month, without the consent of the board of directors, and no stockholder must be permitted to withdraw whose stock is pledged to the corporation as security for a loan, until such loan is fully paid. All with-

drawals must be paid in succession in the order that the notices of intention are given. Whenever the demands of withdrawing stockholders or investors exceed the money applicable to their payment, the notices of intention to withdraw must be registered in the order of filing and payments thereon must be made in succession, in the order that such notices were filed and registered. The board of directors may permit the withdrawal of a part of the accumulations to the credit of a stockholder or member, on shares of instalment stock not issued in serial form, without thereby reducing the number of shares held by him.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, pp. 255-256; see introductory note to this title; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 927, Kerr's Stats. and Amdts. 1906-7, p. 421. **In effect** after July 1, 1907. **Repealing clause** post § 648.

§ 642a. **RECEIPTS TO BE APPLIED TO DEMANDS UNPAID FOR YEAR.** Whenever an application for withdrawal of free shares or certificates shall have been on file, or the payment of matured shares demanded, and either shall have remained unpaid for a period of one year, all the receipts of the association from dues, interest, premium, loans repaid, and the proceeds of all other investments, shall, after the payment of expenses and general indebtedness, be applied toward the payment of withdrawals and maturities; and the board of directors or the official vested by law with powers of state supervision and license may direct that such payments shall be made upon a rateable and proportionate basis.

[Demands unpaid for two years; business may be taken over.] Whenever such applications or demands, whether heretofore or hereafter made, have been on file and remain unpaid in whole or in part for more than two years the official vested by law with powers of state supervision and license may, in his discretion, forthwith take possession of the

property and business of such association, and retain such possession until its affairs be finally liquidated in the manner provided by law for the liquidation of associations by him.

History: Enactment approved April 28, 1915, Stats. and Amdts. 1915, p. 239. **In effect** August 8, 1915.

§ 643. MEMBERSHIP. Any person of full age and sound mind may become a member of an association by taking one or more shares therein and subscribing to the by-laws, and annexing to his signature his post-office address. A minor may hold shares in the name of a parent, guardian, or next friend, as trustee. The shares of stock in any such corporation held by any person, to the extent of one thousand dollars, shall be exempt from execution.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 256; see introductory note to this title; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 387, held unconstitutional, see history, § 593 ante; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 928, Kerr's Stats. and Amdts. 1906-7, p. 421. **In effect** after July 1, 1907. **Repealing clause** post § 648.

§ 644. STATE SUPERVISION AND CONTROL. All building and loan associations, as in this title defined, doing business in this state, shall be under the supervision and control of such official or officials as are by law vested therewith; and except in the manner provided in this title, no corporation, firm, or association shall conduct or carry on the business of accumulating the savings of its shareholders, members, or investors, and loaning such accumulations to them, in the manner of building and loan associations.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 256; see introductory note to this title; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 928. **In effect** after July 1, 1907. **Repealing clause** post § 648.

§ 645. **ANNUAL REPORT.** Every association organized under the provisions of this title, and every other association doing a similar business, shall annually make a full report, in writing, of the affairs and condition of such corporation, within thirty days after its annual meeting, to the official or officials vested with powers of state supervision and license. Such reports shall be verified by the oath of the officers making the same, and a copy of the same shall be delivered to every stockholder, from the office of the corporation, who may call for such report.

[Further reports.] Every association shall make any further reports which the said officials may require, and in such form and as to such matters relating to the conduct of the business of the association as such official or officials may designate.

[False statements in reports perjury, when.] Any wilfully false statement in making and verifying said report shall be perjury. Any such association which shall fail to furnish the said official or officials any such report required, within thirty days after demand, shall forfeit the sum of ten dollars per day for every day such report shall be delayed or withheld, which may be recovered in an action brought by the attorney-general in the name of the people of this state; and all moneys so recovered shall be paid to the treasurer of this state, who shall pay the same into such fund as may be provided by law, for the purposes of the official or officials vested with power of supervision and license.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, pp. 256-257; see introductory note to this title; former section repealed and present enacted March 23, 1907, Stats. and Amdts. 1907, p. 928, Kerr's Stats. and Amdts. 1906-7, p. 421. **In effect** after July 1, 1907. **Repealing clause** post § 648.

§ 646. **BUILDING AND LOAN ASSOCIATIONS MUST MAKE DEPOSIT. GUARANTEE FUND.** Every building and loan association, and every other corporation, association or society organized under and by virtue of the laws

of any other state or territory or of any foreign country, for the purpose of conducting and carrying on a business of a character similar to that authorized by this title, or whose by-laws, rules, prospectus, contracts or methods of business provide for the conducting or carrying on the business of accumulating the periodical payments or savings of its shareholders, members or investors in the manner of building and loan associations, or as authorized and provided in this title, desiring to enter the State of California for the transaction of business or for selling its bonds, debentures, certificates, shares of stock, shares of membership, contracts or other similar securities, must first comply with the requirements of sections four hundred five and four hundred eight of the Civil Code and immediately thereafter deposit with the official vested by law with state supervision and license not less than fifty thousand dollars in lawful money of the United States or in bonds of the United States or of the State of California, or of any county, municipality or school district of said state, or of any public utility corporation, or of any irrigation district in said state, the bonds issued by which district are legal investments for savings banks or any notes or bonds secured by mortgage or deed of trust payment of which is guaranteed by a policy of mortgage insurance, or mortgage participation certificates, issued by a mortgage insurance company in accordance with the provisions of chapter eight, title two, part four of division first of the Civil Code or in lieu thereof promissory notes secured by first mortgages or deeds of trust upon real estate located within this state, satisfactory to the official vested by law with state supervision and license of building and loan associations, all duly assigned or endorsed in blank, to be held by the said official as a guarantee fund for the protection and indemnity of residents of the State of California who shall invest in any of its bonds, debentures, shares, contracts, agreements or other securities, or with whom it shall do business.

[License.] It must also procure from the official vested by law with state supervision and license of building and

loan associations, the license provided for building and loan and similar corporations and associations, paying the statutory fee therefor before entering upon the transaction of business, and annually renew the same.

[Securities may be substituted.] With the consent of the said official vested by law with state supervision and license any of the securities deposited as herein provided may be withdrawn at any time upon the substitution and deposit of others of form and character herein specified and of like or greater net value, so long as the aggregate net convertible value of all equals or exceeds the amount named herein. The fund thus created is not to be foreclosed or realized upon except for the liquidation of a final judgment in favor of residents of California who were investors in any of the above mentioned securities of such foreign company, corporation or association, and then only after certified proof thereof has been filed with the custodian.

Except as above provided securities deposited as herein specified shall not be withdrawn until satisfactory proof of the liquidation of all liabilities to residents of California, approved by the official vested by law with state supervision and license, shall be filed with the custodian, when all may then be withdrawn.

[Penalty for non-compliance.] Any person or persons who shall be found in the state, as principal, agent, solicitor, or in any other capacity, soliciting or conducting the business of selling, disposing of, or taking or soliciting subscriptions for the sale of any of the forms of bonds, debentures, shares, contracts, agreements or other securities of any such foreign company, corporation or association which has not complied with all the requirements of this section shall be deemed guilty of a misdemeanor punishable, upon conviction, by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment in the county jail for not less than one nor more than twelve months, or by both such fine and imprisonment.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 257; former section repealed and present section enacted March 23, 1907, Stats. and Amdts. 1907, p. 929, Kerr's Stats. and Amdts. 1906-7, p. 422; amended May 19, 1915, Stats. and Amdts. 1915, p. 573. **In effect** August 8, 1915.

§ 647. **INVESTMENT IN AND LOANS UPON BONDS.** Any building and loan association may invest in or loan upon bonds of the United States, of the State of California, or of any county, municipality or school district of said state, or of any public utility corporation, and may also invest in or loan upon notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance, or mortgage participation certificates, issued by a mortgage insurance company in accordance with the provisions of chapter VIII, of title II of part IV of division first of the Civil Code, the total of which investments at any time shall not exceed twenty-five per centum of the assets of such association;

[Approval by official vested with power of supervision.] Provided, however, that any such loan or investment made by such association must be approved by the official, or officials, vested with the powers of supervision and license.

History: Original section enacted March 31, 1891, Stats. and Amdts. 1891, p. 257; repealed and present section enacted March 23, 1907, Stats. and Amdts. 1907, p. 929, Kerr's Stats. and Amdts. 1906-7, p. 423; amended May 3, 1915, Stats. and Amdts. 1915, p. 317. **In effect** August 8, 1915.

§ 648. **BUILDING AND LOAN ASSOCIATION. DEFINITION OF TERM.** The name "building and loan association" as used in this title shall include:—

First. Corporations formed for the purpose of receiving money from, and loaning money to, their members only.

Second. Corporations, associations, companies, copartnerships, and individuals transacting the business of issuing or selling bonds, debentures, certificates, shares of stock, or

other papers, by whatever name said instruments may be designated, whether said instruments are issued for money paid in advance or for money to be paid in installments, but with an intent, either implied or expressed, that the proceeds or accumulated installments thereof and thereon are to be withdrawable or repayable, with accumulated profits, at some future fixed, or indefinite date of maturity; provided always, that this section does not include persons, copartnerships or corporations engaged in any kind of banking business.

[In effect when.] Sec. 2. This act shall take effect and be in force from and after its passage.

Act of March 23, 1907, contained the following sections:

Status of present contracts. Sec. 2. Nothing contained in this act shall alter, impair, or render void any certificate of stock heretofore issued or contract heretofore made by any such corporation.

[Repealing clause. Sec. 3. All acts in conflict with this act are hereby repealed.]

History: Enacted March 31, 1891, Stats. and Amdts. 1891, p. 257; former section repealed and present section enacted March 23, 1907, Stats. and Amdts. 1907, p. 929, Kerr's Stats. and Amdts. 1906-7, p. 423; amended March 22, 1909, Stats. and Amdts. 1909, p. 609.

§ 648a. BUILDING AND LOAN ASSOCIATIONS. FORMATION WITH OR WITHOUT GUARANTEE. Building and loan associations may be formed under this title with or without guarantee or other capital stock, with all the rights, powers and privileges and subject to all the restrictions and liabilities set forth in this title. If formed without any capital stock or with guarantee capital stock only, the working capital may be accumulated by the issue of membership shares, units or certificates having a paid up or ultimate matured installment value of one hundred or two hundred dollars each, and entitled to all the rights, powers and privileges and subject to all the restrictions and liabili-

ties provided in this title for shares of authorized capital stock of a similar class. Any building and loan association heretofore formed may re-incorporate under the provisions of this section and may substitute membership shares, units er certificates of similar classes for its outstanding or authorized shares of capital stock, other than guarantee capital stock, by the unanimous vote of its board of directors and by a vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock and by filing amended articles of incorporation with the county clerk of the county in which the corporation's principal place of business is located and a copy of said amended articles, certified by such county clerk, in the office of the secretary of state.

History: Enacted March 25, 1909, Stats. and Amdts. 1909, p. 721.

[This is a new title added by Act March 14, 1885, Stats. and Amdts. 1885, p. 132.]

TITLE XVII.

COLLEGES AND SEMINARIES OF LEARNING.

§ 649. Articles of incorporation; contents of.
§ 650. Board of trustees; classification of.
§ 651. Existing corporations may reincorporate under this act.

§ 649. ARTICLES OF INCORPORATION; CONTENTS OF. Any number of persons who may desire to establish a college or seminary of learning may incorporate themselves as provided in this part, except that in lieu of the requirements of section two hundred ninety, the articles of incorporation shall contain:

1. **The name** of the corporation.

2. **The purpose** for which it is organized.

3. **The place** where the college or seminary is to be conducted.

4. **The number of its trustees,** which shall not be less than five nor more than thirty and the names and residences of the trustees. The term for which the trustees named and their successors are to hold office may also be stated. If it is desired that the trustees, or any portion of them, shall belong to any organization, society, or church, such limitation shall be stated.

5. **[Capital stock.]** If said corporation is to have capital stock, the amount of its capital stock and the number of shares into which it is divided, and the amount actually subscribed and by whom.

History: Enacted March 14, 1885, Stats. and Amdts. 1885, p. 133; amended April 2, 1911, Stats. and Amdts. 1911, p. 583.

§ 650. BOARD OF TRUSTEES; CLASSIFICATION OF. Unless otherwise provided in the articles of incorpora-

tion the board of trustees shall, as soon as organized, so classify themselves that one-fifth of their number shall go out of office every year, and thereafter the trustees shall hold office for five years.

[Quorum.] A majority of the trustees shall constitute a quorum for the transaction of business, except when the number of trustees exceeds thirteen they may, in the by-laws, provide that not less than seven shall constitute a quorum. The office of the corporation shall be at the college or seminary or at such place as shall be designated by the board of trustees.

[Powers.] The trustees shall have the power:

[To elect president.] 1. To elect, by ballot, annually one of their number as president of the board.

[To fill vacancies.] 2. Upon the death, removal out of the state, or other vacancy in the office, or expiration of the term of any trustee, to elect another in his place who shall hold office for the time and under the conditions prescribed in the by-laws of the corporation; provided, that where there are graduates of the institution, such graduates may, under such rules as the board shall prescribe, nominate persons to fill vacancies in the board of trustees. Such nominations shall be considered by the board, but it may reject any or all such nominations, and of its own motion appoint others.

3. **To elect additional trustees;** provided, the whole number elected shall never exceed thirty at any one time.

4. **To declare vacant the seat of any trustee** who shall absent himself from eight succeeding meetings of the board.

5. **[To hold property.]** To receive and hold, by purchase, gift, devise, bequest, or grant, real or personal property for educational purposes connected with the corporation, or for the benefit of the institution.

6. **To sell, mortgage, lease and otherwise use and dispose of** the property of the corporation in such manner as they shall deem most conducive to the prosperity of the corporation.

7. **To direct and prescribe the course of study and discipline** to be observed in the college or seminary.

8. **To appoint a president of the college** or seminary, who shall hold his office during the pleasure of the trustees.

9. **To appoint such professors, tutors, and other officers** as they shall deem necessary, who shall hold their offices during the pleasure of the trustees.

10. **To grant such literary honors as are usually granted** by any university, college, or seminary of learning in the United States and in testimony thereof to give suitable diplomas under their seal, and the signature of such officers of the corporation and the institution as they shall deem expedient.

11. **To fix salaries** of the president, professors, and other officers and employees of the college or seminary.

12. **Subject to the consent and approval** of the organization, society or church to which it is required by the articles of incorporation that said trustees shall belong, to make all by-laws and ordinances necessary and proper to carry into effect the preceding powers and necessary to advance the interests of the college or seminary; provided, that no by-laws or ordinances shall conflict with the constitution or laws of the United States, or of this state.

History: Enacted March 14, 1885, Stats. and Amdts. 1885, p. 133; amended March 20, 1909, Stats. and Amdts. 1909, p. 588; June 6, 1913, Stats. and Amdts. 1913, p. 400. **In effect** August 10, 1913.

§ 651. **EXISTING CORPORATIONS MAY REINCORPORATE UNDER THIS ACT.** Any educational corporation, or body claiming to be such, now existing, may, by a unanimous vote of those of its trustees present at a special meeting called for that purpose, and of which due notice shall be given to each trustee, convey all its property, rights, and franchises, to a corporation organized under this title. The fact that due notice of the meeting was given to each trustee shall be conclusively proven by the entries in the minutes

of the corporation or body making the conveyance. Said minutes shall be certified to be correct by the president and secretary.

History: Enacted March 14, 1885, Stats. and Amdts. 1885, p. 134. **In effect** March 14, 1885.

[A new title added by Act February 23, 1893, Stats. and Amdts. 1893, p. 4.]

TITLE XVIII.

CONSOLIDATION OF COLLEGES AND INSTITUTIONS OF HIGHER EDUCATION.

§ 652. Societies and organizations authorized to consolidate.
§ 653. Specific grants, etc., must not be diverted.

§ 652. SOCIETIES AND ORGANIZATIONS AUTHORIZED TO CONSOLIDATE. Whenever any benevolent, religious or fraternal organization or society, having a grand lodge, assembly, conference or other legislative or representative head in the State of California, having two or more colleges or institutions of higher education under its patronage, shall, for the purpose of greater efficiency and simplicity in the administration of its educational interests, desire to consolidate such institutions under one management, such organization or society shall be and is hereby authorized to consolidate such institutions under one management by complying with the following provisions:

[New corporation—Trustees—Term of office.] Such grand lodge, assembly, conference or other legislative or representative head having authorizd a consolidation of its institutions, a new corporation shall be formed. The board of trustees of the new corporation shall at first consist of the persons constituting the boards of trustees of the several institutions, respectively thus consolidating, and others; provided the number of trustees shall not exceed forty-five. The board of trustees shall be so classified that the term of office of one-third of its number shall expire each year; the successors of such trustees, as their terms expire, shall be elected by such grand lodge, assembly, conference or other legislative or representative head, at its annual meeting.

The said board of trustees shall report annually to the grand lodge, conference, assembly or other legislative or representative head controlling it, the condition of affairs of such corporation, and the amount and manner of its receipts and expenditures.

[Reduction of board of trustees—Limitation.] After the two or more colleges or institutions of higher education under the patronage of any benevolent, religious or fraternal organization or society, having a grand lodge, assembly, conference or other legislative or representative head in the State of California shall have become consolidated as hereinabove directed or specified, the board of trustees of the new corporation, consisting at first of the persons constituting the boards of trustees of the several institutions, respectively thus consolidated, may be reduced in number after said board of trustees shall have transacted the business of said corporation for a period of five years after such consolidation. Said number shall be reduced by the grand lodge, assembly, conference or other legislative or representative head of said colleges or institutions of higher education in the following manner, viz.: At any annual session of such grand lodge, assembly, conference or other legislative or representative head, there shall be dropped from the number of trustees to be elected at that session of such grand lodge, assembly, conference or other legislative or reprsentative head such a number of trustees as those present at such session shall determine, provided however, that at no time shall the number of trustees composing such board be less than fifteen.

History: Enacted February 23, 1893, Stats. and Amdts. 1893, p. 4; amended March 9, 1895, Stats. and Amdts. 1895, p. 40; March 15, 1909, Stats. and Amdts. 1909, p. 385.

§ 653. **SPECIFIC GRANTS, ETC., MUST NOT BE DIVERTED.** The several boards of trustees of the institutions thus consolidated shall be and are hereby authorized and di-

rected to transfer all property, real and personal, held by them, to the new corporation, as herein constituted, together with all powers, privileges, and authority conferred upon or enjoyed by them under their respective charters or acts of incorporation. The new corporation receiving such property shall assume all indebtedness and liabilities of such institutions as are thus consolidated, but shall not transfer such property from one location to another, except by an affirmative vote of not less than three fourths of the said board of trustees of the new corporation, nor divert specific grants, donations, or bequests from the purposes for which such grants, donations, or bequests were made. That after the boards of trustees have conveyed the property, real and personal, of the various institutions to the new corporation, as hereinabove provided, and the same has been accepted by the said new corporation, then the franchises held by the corporations thus consolidating shall cease, and the said corporations shall be thereby dissolved.

History: Enacted February 23, 1893, Stats. and Amdts. 1893, p. 4; amended March 9, 1895, Stats. and Amdts. 1895, p. 40.

[A new title added by Act March 21, 1905, Stats. and Amdts. 1905, p. 594.]

TITLE XIX.

CO-OPERATIVE BUSINESS CORPORATIONS.

§ 653a. Purposes for which may be formed.

§ 653a. PURPOSES FOR WHICH MAY BE FORMED.

Co-operative business corporations may be formed for doing any lawful business, and dividing a portion of their profits among persons other than their stockholders. Each of such corporations may, in its by-laws, in addition to the matters specified in section three hundred and three, provide the amount of profits which must be divided among persons other than its stockholders, and the manner in which and the persons among whom such division may be made.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 594.

[A new title added by Act March 21, 1905, Stats. and Amdts. 1905, pp. 595-599.]

TITLE XX.

CO-OPERATIVE BUSINESS ASSOCIATIONS.

§ 653b. Formation and purposes of.
§ 653c. Rights, interests, and liabilities of members.
§ 653d. The articles of association.
§ 653e. The by-laws.
§ 653f. Execution against the association or its members.
§ 653g. Purpose of the association, how may be altered.
§ 653h. Powers of the association.
§ 653ha. Method of calling meetings of unincorporated societies, etc.
§ 653i. Consolidation of associations.
§ 653j. Dissolution and winding up of association.

§ 653k. Quo warranto to inquire into the right of an association to do business.
§ 653l. What corporations or associations are not affected by this title.

§ 653b. **FORMATION AND PURPOSE OF.** Five or more persons may form a co-operative association for the transaction of any lawful business, whether for profit or not, or for the promotion of any educational, industrial, benevolent, social, or political purpose. Such association must not have any capital stock, but must issue membership certificates to each member.

[Certificate of membership—Transfer.] Such certificate cannot be assigned, so that the assignee can, by its transfer, become a member of the association, but, by a resolution of its board of directors, such certificate may be transferred, and the transferee made a member in lieu of the last former holder.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 595.

§ 653c. **RIGHTS, INTERESTS, AND LIABILITY OF MEMBERS.** In such association the rights and interests of all members are equal, and no member can have or acquire a greater interest therein than any other member has. At every election held pursuant to the by-laws each member must be entitled to cast one vote and no more.

[Who are eligible to membership.] All persons above the age of eighteen years, regardless of sex, are eligible to membership, if otherwise qualified and elected as the by-laws may provide. The by-laws must provide for the amount of the indebtedness which such association may incur.

[Liability of members.] And no member shall be responsible individually, or personally liable, for any of the debts or liabilities of the association in excess of his proportion of such indebtedness; but in case of the failure and insolvency of such association, may be required to pay any unpaid dues or instalments which have, before such insolv-

ency, become due from such member to the association, pursuant to its by-laws.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 595.

§ 653d. **THE ARTICLES OF ASSOCIATION.** Every association formed under this title must prepare articles of association, in writing, stating: The name of the association, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist, not to exceed fifty years, the number of the directors thereof, and the names and residences of those selected for the first year, the amount which each member is to pay upon admission as membership fee, and that each member signing the articles has actually paid in such sum, and that the interest and right of each member therein is to be equal.

[Subscription and acknowledgment; filing.] Such articles of association must be subscribed by the original associates or members, and acknowledged by each before some person competent to take an acknowledgment of a deed in this state. Such articles so subscribed and acknowledged must be filed in the office of the clerk of the county wherein the principal business of the association is to be transacted, and a copy thereof certified by such clerk, with the secretary of state, who must thereupon issue his certificate in the form, and having the effect prescribed in section two hundred and ninety-six.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 595-596.

§ 653e. **THE BY-LAWS.** Every association formed under this title must, within forty days after it so becomes an association, adopt a code of by-laws for the government and management of the association, not inconsistent with this title. A majority of all the associates is necessary to the adoption of such by-laws, and the same must be written

in a book, and subscribed by the members adopting the same, and the same cannot be amended or modified except by the vote of a majority of all the members, after notice of the proposed amendment, given as the by-laws may provide.

[What by-laws may provide—Number, terms, and compensation of officers.] Such association may, by its by-laws, provide for the time, place, and manner of calling and conducting its meetings; the number of directors, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies in the board caused by death, resignation, removal, or otherwise, and the power and authority of such directors, and how many thereof are necessary to the exercise of the powers of such directors, which must be at least a majority; the compensation of any of the directors, or of any officer; the number of the officers, if any, other than the directors, and their term of office; the mode of removal, and the method of filling a vacancy; the mode and manner of conducting business; the mode and manner of conducting elections, and may provide for voting by ballots forwarded by mail or otherwise;

[Manner of conducting elections; qualifications and succession; expulsion.] Provided the method secures the secrecy of the ballot; the mode and manner of succession of membership, and the qualifications for membership, and on what conditions, and when membership must cease, and the mode and manner of expulsion of a member, subject to the right of an expelled member to have the board of directors appraise his interest in the association in either money, property, or labor, as the directors may deem best, and to have the money, property, or labor so awarded him paid, or delivered, or performed within forty days after expulsion;

[Amount of membership fees, dues, etc.] The amount of membership fee, and the dues, instalments, or labor which each member must be required to pay or perform, if any,

and the manner of collection or enforcement, and for forfeiting or selling of membership interest for non-payment or non-performance;

[Withdrawal; ascertainment of interest.] The method, time, and manner of permitting the withdrawal of a member, if at all, and how his interest must be ascertained, either in money or property, and within what time the same must be paid or delivered to such member; the mode and manner of ascertaining the interest of a member at his death, if his legal representatives or none of them desire to succeed to the membership, and whether the same must be paid to his legal representatives in money, or property, or labor, and within what time the same must be paid, or delivered, or performed; such other things as may be proper to carry out the purpose for which the association was formed.

[Division of profits.] The by-laws must provide for the time and manner in which profits must be divided among the members, and what proportion of the profits, if any, must be added to the common property or funds of the association. But the by-laws may provide that the directors may suspend or pass the payment of any such profit, or instalment of earnings, at their discretion.

[Recording and filing by-laws.] The by-laws and all amendments must be recorded in a book and kept in the office of the association, and a copy, certified by the directors, must be filed in the office of the county clerk where the principal business is transacted.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 596-597.

§ 653f. **EXECUTION AGAINST THE ASSOCIATION OR ITS MEMBERS.** The property of such association is subject to attachment and execution for its lawful debts. The interest of a member in such association, if sold upon execution, or any judicial or governmental order what-

ever, cannot authorize the purchaser to have any right, except to succeed, as a member in the association, with the consent of the directors, to the rights of the member whose interest is thus sold. If the directors choose to pay or settle the matter after such sale, they may either cancel the membership, and add the interest thus sold to the assets or common property of the association, or reissue the share or right to a new member upon proper payment therefor, as the directors may determine.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 597.

§ 653g. **PURPOSE OF THE ASSOCIATION, HOW MAY BE ALTERED.** The purpose of the business may be altered, changed, modified, enlarged, or diminished by a vote of two-thirds of all the members, at a special election to be called for such purpose, of which notice must be given the same as the by-laws provide for the election of directors.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 597.

§ 653h. **POWERS OF THE ASSOCIATION.** Every association formed under this title has power of succession by its associate name for fifty years; in such name to sue and be sued in any court; to make and use a common seal, and alter the same at pleasure; to receive by gift, devise, or purchase, hold, and convey real and personal property, as the purposes of the association may require; to appoint such subordinate agents or officers as the business may require; to admit associates or members, and to sell or forfeit their interest in the association for default of instalments, or dues, or work, or labor required, as provided by the by-laws; to enter into any and all lawful contracts or obligations essential to the transaction of its affairs, for the

purpose for which it was formed, and to borrow money, and issue all such notes, bills, or evidences of indebtedness or mortgage as its by-laws may provide for; to trade, barter, buy, sell, exchange, and to do all other things proper to be done for the purpose of carrying into effect the objects for which the association is formed.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, pp. 597-598.

§ 653ha. METHOD OF CALLING MEETINGS OF UNINCORPORATED SOCIETIES, ETC. In all cases where neither the constitution nor by-laws of an unincorporated society, organization or association fixes the manner of calling meetings of such unincorporated society, organization or association, or where the officer or officers, or person or persons whose duty it is under the said constitution or by-laws to call a meeting thereof fails, neglects and refuses to call such meeting, a meeting thereof may be called by twelve members thereof in the manner following: By signing a call for such meeting, in which call the time and place of such meeting shall be stated, and giving two weeks' notice of such meeting by publication of such call in some newspaper of general circulation published in the county or city and county where the last preceding meeting of such society, organization or association was held, or if no such newspaper is published in such county or city and county, then in a newspaper of general circulation published in an adjoining county; provided, however, that in the event the by-laws of any such unincorporated society, organization, or association specify a particular method or manner of giving notice of a meeting, such provision shall be followed, in addition to the method hereinabove provided, in a notice of any meeting given by said twelve members.

History: Enactment approved May 26, 1915, Stats. and Amdts. 1915, p. 857. **In effect** August 8, 1915.

§ 653 i. **CONSOLIDATION OF ASSOCIATIONS.** Two or more associations formed and existing under this title, or under any pre-existing law authorizing their formation for the same purposes, may be consolidated, upon such terms, and for such purposes, and by such name, as may be agreed upon, in writing, signed by two-thirds of the members of each such association.

[What agreement must state; filing; fee.] Such agreement must also state all the matters necessary to articles of association, and must be acknowledged by the signers before an officer competent to take an acknowledgment of deeds in this state, and be filed in the office of the county clerk of the county wherein the principal business of the association is to be transacted, and a certified copy thereof in the office of the secretary of state, and pay the same fees for filing and recording as required by this code for the filing and recording of the certified copy of the original articles of association; and from and after the filing of such certified copy, the former associations comprising the component parts cease to exist, and the consolidated association succeeds to all the rights, duties, and powers of the component associations, and is possessed of all the rights, duties, and powers prescribed in the agreement of consolidated association not inconsistent with this title, and is subject to all the liabilities and obligations of the former component associations, and succeeds to all the property and interests thereof, and may make by-laws and do all things permitted by this title.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 598.

§ 653j. **DISSOLUTION AND WINDING UP OF ASSOCIATION.** Any association formed or consolidated under this title may be dissolved and its affairs wound up voluntarily by the written request of two-thirds of the members. Such request must be addressed to the directors,

and must specify reasons why the winding up of the affairs of the association is deemed advisable, and must name three persons who are members to act in liquidation and in winding up the affairs of the association, a majority of whom must thereupon have full power to do all things necessary to liquidation; and upon the filing of such request with the directors, and a copy thereof in the office of the county clerk of the county where the principal business is transacted, all power of the directors ceases and the persons appointed must proceed to wind up the association, and realize upon its assets, and pay its debts, and divide the residue of its money among the members, share and share alike, within a time to be named in said written request, or such further time as may be granted them by two thirds of the members, in writing, filed in the office of said county clerk; and upon the completion of such liquidation the said association must be deemed dissolved. No receiver of any such association, or of any property thereof, or of any right therein, can be appointed by any court, upon the application of any member, save after judgment of dissolution for usurping franchises at the suit of the state of California by its attorney-general.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 598.

§ 653k. QUO WARRANTO TO INQUIRE INTO THE RIGHT OF AN ASSOCIATION TO DO BUSINESS. The right of any association claiming to be organized under this title to do business may be inquired into by quo warranto, at the suit of the attorney-general of this state, but not otherwise.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 599.

§ 6531. **WHAT CORPORATIONS OR ASSOCIATIONS ARE NOT AFFECTED BY THIS TITLE.** This title is not applicable to railroads, telegraph, telephone, banking, insurance, building and loan, or any other corporation, unless the special provisions of this code, applicable thereto, are complied with.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 599.

[A new title to be XXI of part IV of division First added by Act February 12, 1909, (Stats. and Amdts. 1909, p. 16), to read as follows:]

TITLE XXI.

NON-PROFIT CO-OPERATIVE AGRICULTURAL, VITICULTURAL, AND HORTICULTURAL ASSOCIATIONS.

§ 653m. Formation and purposes of.
§ 653n. Membership.
§ 653o. Articles of incorporation.
§ 653p. By-laws.
§ 653q. Powers of association.
§ 653r. Amendment to articles of incorporation.
§ 653s. Quo warranto.

§ 653m. FORMATION AND PURPOSES OF. Three or more persons engaged in the production, preserving, drying, packing, shipping, or marketing of agricultural, viticultural or horticultural products, or all of them, may form a non-profit co-operative association under the provisions of this title, to carry on said business, and such association shall have, and may exercise, the powers authorized by this title, and the powers necessarily incidental thereto, and all other powers granted to private corporations by the laws of this state, except such powers as are inconsistent with those granted by this title.

History: Enacted February 12, 1909, Stats. and Amdts. 1909, p. 16.

§ 653n. MEMBERSHIP. Such association shall not have a capital stock, and its business shall not be carried on for profit. Any person or any number of persons, in addition to the original incorporators, may become members of such association, upon such terms and conditions as to membership, and subject to such rules and regulations as

to their, and each of their, contract and other rights and liabilities between it and the member, as the said association shall provide in its by-laws.

[Certificate of membership. Right of succession.] The association shall issue a certificate of membership to each member, but the said membership, or the said certificate thereof, shall not be assigned by a member to any other person, nor shall the assigns thereof be entitled to membership in the association, or to any property rights or interests therein. Nor shall a purchaser at execution sale, or any other person who may succeed, by operation of law or otherwise to the property interests of a member, be entitled to membership, or become a member of the association by virtue of such transfer. The board of directors may, however, by motion duly adopted by it, consent to such assignment or transfer and to the acceptance of the assignee or transferee as a member of the association, but the association shall have the right, by its by-laws, to provide for or against the transfer of membership and for or against the assignment of membership certificates, and also the terms and conditions upon which any such transfer or assignment shall be allowed.

History: Enacted February 12, 1909, Stats. and Amdts. 1909, p. 17.

§ 653o. **ARTICLES OF INCORPORATION.** Each association formed under this title must prepare and file articles of incorporation setting forth:

1. The name of the association.

2. The purpose for which it is formed.

3. The place where its principal business will be transacted.

4. The term for which it is to exist, not exceeding fifty years.

5. The number of directors thereof, which must not be less than three and which may be any number in excess thereof,

and the names and residences of those selected for the first year and until their successors shall have been elected, and shall have accepted office.

6. Whether the voting power and the property rights and interest of each member shall be equal or unequal, and if unequal the articles shall set forth a general rule or rules applicable to all members by which the voting power and the property rights and interests, respectively, of each member may and shall be determined and fixed, but the association shall have power to admit new members who shall be entitled to vote and to share in the property of the association with the old members, in accordance with such general rule. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the unanimous written consent or the vote of all of the members.

7. Said articles must be subscribed by the original members and acknowledged by one of them before an officer authorized by the law of this state, to take and certify acknowledgments of deeds of conveyance, and shall be filed in accordance with the provisions of section two hundred and ninety-six of this code, and when so filed the said articles of incorporation or certified copies thereof shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein.

History: Enacted February 12, 1909, Stats. and Amdts. 1909, p. 17.

§ 653p. **BY-LAWS.** Each association incorporated under this title must, within thirty days after its incorporation, adopt a code of by-laws for its government and management not inconsistent with the provisions of this title. A majority vote of the members or the written assent of members representing a majority of the votes, is necessary to adopt such by-laws. The provisions of sections three hundred and three and three hundred and four of this code,

which are not inconsistent with the provisions of this title, shall apply to the by-laws of the corporations provided for in this title. Each association may also, by its by-laws adopted as aforesaid, provide for the following matters:

1. The manner of removal of any one or more of its directors and for filling any and all vacancies in the board of directors.

2. The number of directors and the number of members or votes thereof constituting a quorum.

3. The conditions upon which and the time when membership of any member in the association shall cease; the mode, manner and effect of expulsion of a member, subject to the right of the expelled member to have the board of directors equitably appraise his property interests in the association and to fix the amount thereof in money, and to have the money paid to him within sixty days after such expulsion.

4. The amount of membership fee, if any, and the amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the association, and also the compensation, if any, to be paid by each member for any services rendered by the association to him, and the time of payment and the manner of collecting the same, and for forfeiture of the interest of the member in the association for non-payment of the same.

5. The number and qualifications of members of the association and the conditions precedent to membership and the method, time and manner of permitting members to withdraw, and providing for the assignment and transfer of the interest of members, and the manner of determining the value of such interest and providing for the purchase of such interest by the association upon the death, withdrawal or expulsion of a member or upon the forfeiture of his membership, at the option of the association.

6. Permitting members to vote by their proxies, and determining the conditions, manner, form and effect thereof.

History: Enacted February 12, 1909, Stats. and Amdts. 1909, p. 18.

§ 653q. **POWERS OF ASSOCIATION.** Each association incorporated under this title shall have the powers granted by the provisions of this code and other laws of California relating to private corporations, and shall also have the following powers:

1. To appoint such agents and officers as its business may require, and such appointed agents may be either persons or corporations; to admit persons to membership in the association, and to expel any member pursuant to the provisions of its by-laws; to forfeit the membership of any member for violation of any agreement between him and the association, or for his violation of its by-laws.

2. To purchase or otherwise acquire, hold, own, sell and otherwise dispose of any and every kind or kinds of real and personal property necessary to carry on its business, and to acquire by purchase or otherwise the interest of any member in the property of the association.

3. Upon the written assent or by a vote of members representing two-thirds of the total votes of all members to co-operate with any other co-operative corporation or corporations for the co-operative and more economical carrying on of their respective business, by consolidation as provided in section six hundred and fifty-three i of this code, whereupon the effect of such consolidation shall be the same as declared in said section; or upon resolution, adopted by its board of directors, to enter into all necessary and proper contracts and agreements, and to make all necessary and proper stipulations and arrangements with any other co-operative corporation or corporations for the co-operative and more economical carrying on of its business, or any part or parts thereof; or any two or more co-operative corporations organized under this title, upon resolutions, adopted by their respective board of directors, may, for the purpose of more economically carrying on their respective businesses, by agreement between them, unite in employing and using, or several associations may separately employ and use, the

same methods, means and agencies, for carrying on and conducting their respective businesses.

4. Any association formed or consolidated under this title may be dissolved and its affairs wound up voluntarily by the written request of members representing two-thirds of the total votes, in the manner and with the effect provided in section six hundred and fifty-three j of this code, except that the moneys remaining after liquidation shall be divided among the members in proportion to their property interests therein.

History: Enacted February 12, 1909, Stats. and Amdts. 1909, p. 19.

§ 653r. AMENDMENT TO ARTICLES OF INCORPORATION. Any corporation, whether stock or membership, heretofore incorporated under the laws of this state for the purpose of engaging in and carrying on the business specified in section six hundred and fifty-three m of this title, the stockholders or members of which would be entitled to incorporate under the provisions of this title, may, by the unanimous written assent or vote of all the stockholders or members, amend its articles of incorporation to conform to the provisions of this title in the manner and with the effect provided in section three hundred and sixty-two of the Civil Code, and from the time of filing the amended articles, such corporation shall have the same powers as if it had originally incorporated under the provisions of this title; provided, however, that the debts, obligations, and other liabilities against such corporation or against the members or the stockholders thereof, existing at the time of such amendment, shall not be discharged or their collection or enforcement otherwise impaired; and provided further that the respective property interests of the several stockholders by virtue of their ownership of shares of stock therein, or the several members by virtue of their membership therein, and also the voting power of

each of them, shall be determined and fixed by the amended articles of incorporation in accordance with the provisions of subdivision six of section six hundred fifty-three o, but which rights shall be subject to the right of the association to admit new members.

History: Enacted February 12, 1909, Stats. and Amdts. 1909, p. 19.

§ 653s. **QUO WARRANTO.** The right of an association claiming to be organized and incorporated and carrying on its business under this title, to do and to continue its business, may be inquired into by quo warranto at the suit of the attorney-general, but not otherwise.

History: Enacted February 12, 1909, Stats. and Amdts. 1909, p. 20.

[A new title to be known as title XXII of part IV of division first is hereby added (Act April 13, 1909, Stats. and Amdts. 1909, p. 854), to read as follows:]

TITLE XXII.

NON-PROFIT CO-OPERATIVE CORPORATIONS.

§ 653t. Formation and purpose of.
§ 653u. Membership.
§ 653v. Articles of incorporation.
§ 653w. By-laws.
§ 653x. Powers of corporation.
§ 653y. Amendment of articles of incorporation.
§ 653z. Quo warranto.
§ 653za. Particular corporations.
§ 653zb. Voting.

§ 653t. **FORMATION AND PURPOSE OF.** Non-profit co-operative corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this title. A majority of such persons must be residents of this state, and such corporation shall have and may exercise the powers authorized by this title, and the powers necessarily incident thereto, and also all other powers granted to private corporations by the laws of this state, excepting such powers as are inconsistent with those granted by this title.

History: Enacted April 13, 1909, Stats. and Amdts. 1909, p. 854.

§ 653u. **MEMBERSHIP.** Such corporation shall not have a capital stock, and its business shall not be carried on for profit. Any person or any number of persons including and in addition to the original incorporators, may become members of such corporation upon such terms and conditions as to membership, and subject to such rules and regulations as to their, and each of their, contract and other rights and

liabilities between it and the member, as the said corporation shall prescribe in its by-laws. The corporation shall issue a certificate of membership to each member, but the said membership, or the said certificate thereof, shall not, except as herein provided, be assigned by any member to any other person, nor shall the assigns thereof be entitled to membership in the corporation, or to any property rights or interest therein, nor shall a purchaser at execution sale, or any other person who may succeed, by operation of law or otherwise, to the property interests of a member, be entitled to membership, or become a member of the corporation by virtue of such transfer. The board of directors may, however, by motion duly adopted by it, consent to such assignment or transfer, and to the acceptance of the assignee or transferee as a member of the corporation. The corporation shall also have the right, by its by-laws, to provide for or against the transfer of membership and for or against the assignment of membership certificates, and also the terms and conditions upon which any such transfer or assignment shall be allowed.

History: Enacted April 13, 1909, Stats. and Amdts. 1909, p. 854.

§ 653v. **ARTICLES OF INCORPORATION.** Each corporation formed under this title must prepare and file articles of incorporation in writing setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal business will be transacted.
4. The term for which it is to exist, not exceeding fifty years.
5. The number of directors thereof, which must not be less than three and which may be any number in excess thereof, and the names and residences of those selected for the first year and until their successors shall have been elected, and shall have accepted office.

6. Whether the voting power and the property rights and interest of each member shall be equal or unequal, and if unequal the articles shall set forth a general rule or rules applicable to all members by which the voting power and the property rights and interests, respectively, of each member may and shall be determined and fixed, but the corporation shall have power to admit new members who shall be entitled to vote and to share in the property of the corporation with the old members, in accordance with such general rule.

7. Said articles of incorporation shall be subscribed by three or more of the original members, a majority of whom must be residents of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property, and shall be filed in all respects in accordance with the provisions of section two hundred and ninety-six of this code, and thereupon the secretary of state shall issue to the corporation, over the great seal of the state, a certificate that a copy of the articles containing the required statement of facts has been filed in his office, and thereupon the person signing the articles and their associates and successors shall be a body politic and corporate by the name stated in the certificate. When so filed, the said articles of incorporation or certified copies thereof shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein.

History: Enacted April 13, 1909, Stats. and Amdts. 1909, p. 855.

§ 653w. **BY-LAWS.** Each corporation incorporated under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government and management not inconsistent with the provisions of this title. A majority vote of the members or the written assent of members representing a majority of the votes is necessary to adopt such by-laws. The provisions of section

three hundred and three and three hundred and four of this code, which are not inconsistent with the provisions of this title, shall apply to the by-laws of the corporation provided for in this title. Each corporation organized hereunder may also, by its by-laws adopted as aforesaid, provide for the following matters:

1. The manner of removal of any one or more of its directors and of filling any and all vacancies in the board of directors.

2. The conditions upon which and the time when membership of any member in the corporation shall cease; the mode, manner and effect of expulsion of a member, subject to the right of the expelled member to have the board of directors equitably appraise his property interests in the corporation and to fix the amount thereof in money, and to have the money paid to him within sixty days after such expulsion.

3. The amount of membership fee, if any, and the amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the corporation, and also the compensation, if any, to be paid by each member for any services rendered by the corporation to him, and the time of payment and the manner of collecting the same, and may provide for forfeiture of the interest of the member in the corporation for non-payment of the same.

4. The number and qualifications of members of the corporation and the conditions precedent to membership and the method, time and manner of permitting members to withdraw, and providing for the assignment and transfer of the interest of members, and the manner of determining the value of such interest and providing for the purchase of such interest by the corporation upon the death, withdrawal or expulsion of a member or upon the forfeiture of his membership, at the option of the corporation.

History: Enacted April 13, 1909, Stats. and Amdts. 1909, p. 855.

§ 653x. **POWERS OF CORPORATION.** Each corporation incorporated under this title shall have the powers granted by the provisions of this code and other laws of California, relating to private corporations, which are not inconsistent with those granted by this title, and shall also have the following powers:

1. To appoint such agents and officers as its business may require, and such appointed agents may be either persons or corporations; to admit persons and corporations to membership in the corporation, and to expel any member pursuant to the provisions of its by-laws; to forfeit the membership of any member for violation of any agreement between him and the corporation or for his violation of its by-laws.

2. To purchase, lease or otherwise acquire, hold, own and enjoy, to sell, lease, mortgage and otherwise encumber and dispose of any and all and every kind or kinds of real and personal property, also to carry on any and all operations necessary or convenient in connection with the transaction of any of its business.

3. Upon the written assent of two-thirds of all the members or by a vote of members representing two-thirds of the total votes of all members of each of two or more such non-profit co-operative corporations to co-operate with each other for the more economical carrying on of their respective businesses by consolidation as provided in section six hundred and fifty-three i of this code, such consolidation shall be effected, and thereupon the effect of such consolidation shall be the same as declared in said section. Any such corporation upon resolution, adopted by its board of directors, shall have the power to enter into contracts and agreements, and to make stipulations and arrangements with any other corporation or corporations for the co-operative and more economical carrying on of its business, or any part or parts thereof; or any two or more co-operative corporations organized under this title, upon resolutions adopted

by their respective boards of directors, may, for the purpose of more economically carrying on their respective businesses, by agreement, unite in adopting, employing and using, or several such corporations may separately adopt, employ and use the same methods, policy, means, agents, agencies and terms of marketing for carrying on and conducting their respective businesses.

4. Any corporation formed or consolidated under this title may be dissolved, and its affairs wound up voluntarily by the written consent of members representing two-thirds of the total votes, in the manner and with the effect provided in section six hundred and fifty-three j of this code, except that any property remaining after liquidation shall be divided among the members in proportion to their respective property interests therein.

History: Enacted April 13, 1909, Stats. and Amdts. 1909, p. 856.

§ 653y. **AMENDMENT OF ARTICLES OF INCORPORATION.** Any such corporation may amend its articles of incorporation in any manner not inconsistent with the provisions of this title, in the manner provided for by section three hundred and sixty-two of the Civil Code of this state.

History: Enacted April 13, 1909, Stats. and Amdts. 1909, p. 857.

§ 653z. **QUO WARRANTO.** The right of a corporation claiming to be organized and incorporated and carrying on its business under this title, to do and to continue its business, may be inquired into by quo warranto proceedings at the suit of the attorney-general, but not otherwise.

History: Enacted April 13, 1909, Stats. and Amdts. 1909, p. 857.

§ 653za. **PARTICULAR CORPORATIONS.** This title is not applicable to railroads, telegraph, telephone, banking, insurance, building and loan, or any other corporation, unless the special provisions of this code applicable thereto are complied with.

History: Enacted April 13, 1909, Stats. and Amdts. 1909, p. 857.

§ 653zb. **VOTING.** In the event the by-laws shall provide for unequal voting power, or unequal property rights of the several members, or both, the provisions of this title with reference to a majority, a two-thirds, or other vote of the members, shall not apply, and in lieu thereof, there shall be substituted a majority, or a two-thirds of the votes of the interests represented by the several members, or otherwise as the case may be.

History: Enacted April 13, 1909, Stats. and Amdts. 1909, p. 857.

DIVISION SECOND.

Part I. Property in General, §§ 654-749.

II. Real or Immovable Property, §§ 755-940.

III. Personal or Movable Property, §§ 946-994.

IV. Acquisition of Property, §§ 1000-1425.

PART I.

PROPERTY IN GENERAL.

Title I. Nature of Property, §§ 654-663.

II. Ownership, §§ 669-742.

III. General Definitions, §§ 748-749.

TITLE I.

NATURE OF PROPERTY.

§ 654. Property, what.
§ 655. In what property may exist.
§ 656. Wild animals.
§ 657. Real and personal.
§ 658. Real property.
§ 659. Land.
§ 660. Fixtures.
§ 661. Fixtures attached to mines.
§ 662. Appurtenances.
§ 663. Personal property.

§ 654. **PROPERTY, WHAT.** The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

History: Enacted March 21, 1872.

§ 655. **IN WHAT PROPERTY MAY EXIST.** There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the good-will of a business, trade-marks and signs, and of rights created or granted by statute.

History: Enacted March 21, 1872.

§ 656. **WILD ANIMALS.** Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

History: Enacted March 21, 1872.

§ 657. **REAL AND PERSONAL.** Property is either:
1. Real or immovable; or,
2. Personal or movable.

History: Enacted March 21, 1872.

§ 658. **REAL PROPERTY.** Real or immovable property consists of:
1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;
4. That which is immovable by law.

History: Enacted March 21, 1872.

§ 659. **LAND.** Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

History: Enacted March 21, 1872.

§ 660. **FIXTURES.** A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or embedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws.

History: Enacted March 21, 1872.

§ 661. **FIXTURES ATTACHED TO MINES.** Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith-shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

History: Enacted March 21, 1872.

§ 662. **APPURTENANCES.** A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another.

History: Enacted March 21, 1872.

§ 663. **PERSONAL PROPERTY.** Every kind of property that is not real is personal.

History: Enacted March 21, 1872.

TITLE II.

OWNERSHIP.

Chapter I. Owners, §§ 669-672.
II. Modifications of Ownership, §§ 678-726.
III. Rights of Owners, §§ 732-733.
IV. Termination of Ownership, §§ 739-742.

CHAPTER I.

OWNERS.

§ 669. Owner.
§ 670. Property of the state.
§ 671. Who may own property.
§ 672. Aliens inheriting must claim within five years.

§ 669. **OWNER.** All property has an owner, whether that owner is the state, and the property public, or the owner an individual, and the property private. The state may also hold property as a private proprietor.

History: Enacted March 21, 1872.

§ 670. **PROPERTY OF THE STATE.** The state is the owner of all land below tide-water, and below ordinary high-water mark, bordering upon tide-water within the state; of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated to the state; and of all property of which there is no other owner.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 217.

§ 671. **WHO MAY OWN PROPERTY.** Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this state.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 218.

§ 672. **ALIENS INHERITING MUST CLAIM WITHIN FIVE YEARS.** If a non-resident alien takes by succession, he must appear and claim the property within five years from the time of succession, or be barred. The property in such case is disposed of as provided in title eight, part three, Code of Civil Procedure.

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 391, held unconstitutional, see history, § 4 ante.

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

Article I. Interests in Property, §§ 678-703.
II. Conditions of Ownership, §§ 707-711.
III. Restraints upon Alienation, §§ 715-718.
IV. Accumulations, §§ 722-726.

ARTICLE I.

INTERESTS IN PROPERTY.

§ 678. Ownership, absolute or qualified.
§ 679. When absolute.
§ 680. When qualified.
§ 681. Several ownership, what.
§ 682. Ownership of several persons.
§ 683. Joint interest, what.
§ 684. Partnership interest, what.
§ 685. Interest in common, what.
§ 686. What interests are in common.
§ 687. Community property.
§ 688. Interest as to time.
§ 689. Present interest, what.
§ 690. Future interest, what.
§ 691. Perpetual interest, what.
§ 692. Limited interest, what.
§ 693. Kinds of future interests.
§ 694. Vested interests.
§ 695. Contingent interests.
§ 696. Two or more future interests.
§ 697. Certain future interests not to be void.
§ 698. Posthumous children.
§ 699. Qualities of expectant estates.
§ 700. Same. [Mere possibility of interest.]
§ 701. Interests in real property.
§ 702. Same. [Names and classification of interests.]
§ 703. What future interests are recognized.

§ 678. **OWNERSHIP, ABSOLUTE OR QUALIFIED.** The ownership of property is either:

1. Absolute; or,
2. Qualified.

History: Enacted March 21, 1872.

§ 679. **WHEN ABSOLUTE.** The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

History: Enacted March 21, 1872.

§ 680. **WHEN QUALIFIED.** The ownership of property is qualified:

1. When it is shared with one or more persons;
2. When the time of enjoyment is deferred or limited;
3. When the use is restricted.

History: Enacted March 21, 1872.

§ 681. **SEVERAL OWNERSHIP, WHAT.** The ownership of property by a single person is designated as a sole or several ownership.

History: Enacted March 21, 1872.

§ 682. **OWNERSHIP OF SEVERAL PERSONS.** The ownership of property by several persons is either:

1. Of joint interests;
2. Of partnership interests;
3. Of interests in common;
4. Of community interest of husband and wife.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 391, held unconstitutional, see history, § 4 ante.

§ 683. **JOINT INTEREST, WHAT.** A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 391, held unconstitutional, see history, § 4 ante.

§ 684. **PARTNERSHIP INTEREST, WHAT.** A partnership interest is one owned by several persons, in partnership, for partnership purposes.

History: Enacted March 21, 1872.

§ 685. **INTEREST IN COMMON, WHAT.** An interest in common is one owned by several persons, not in joint ownership or partnership.

History: Enacted March 21, 1872.

§ 686. **WHAT INTERESTS ARE IN COMMON.** Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in section six hundred and eighty-three, or unless acquired as community property.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 391, held unconstitutional, see history, § 4 ante.

§ 687. **COMMUNITY PROPERTY.** Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

History: Enacted March 21, 1872.

§ 688. **INTERESTS AS TO TIME.** In respect to the time of enjoyment, an interest in property is either:

1. Present or future; and,
2. Perpetual or limited.

History: Enacted March 21, 1872.

§ 689. **PRESENT INTEREST, WHAT.** A present interest entitles the owner to the immediate possession of the property.

History: Enacted March 21, 1872.

§ 690. **FUTURE INTEREST, WHAT.** A future interest entities the owner to the possession of the property only at a future period.

History: Enacted March 21, 1872.

§ 691. **PERPETUAL INTEREST, WHAT.** A perpetual interest has a duration equal to that of the property.

History: Enacted March 21, 1872.

§ 692. **LIMITED INTEREST, WHAT.** A limited interest has a duration less than that of the property.

History: Enacted March 21, 1872.

§ 693. **KINDS OF FUTURE INTERESTS.** A future interest is either:

1. Vested; or,
2. Contingent.

History: Enacted March 21, 1872.

§ 694. **VESTED INTERESTS.** A future interest is vested when there is a person in being who would have a right, deteasible or indefeasible, to the immediate possession of

the property, upon the ceasing of the intermediate or precedent interest.

History: Enacted March 21, 1872.

§ 695. **CONTINGENT INTERESTS.** A future interest is contingent, whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

History: Enacted March 21, 1872.

§ 696. **TWO OR MORE FUTURE INTERESTS.** Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

History: Enacted March 21, 1872.

§ 697. **CERTAIN FUTURE INTERESTS NOT TO BE VOID.** A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

History: Enacted March 21, 1872.

§ 698. **POSTHUMOUS CHILDREN.** When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parents.

History: Enacted March 21, 1872.

§ 699. **QUALITIES OF EXPECTANT ESTATES.** Future interests pass by succession, will, and transfer, in the same manner as present interests.

History: Enacted March 21, 1872.

§ 700. SAME. [MERE POSSIBILITY NOT AN INTEREST.] A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

History: Enacted March 21, 1872.

§ 701. INTERESTS IN REAL PROPERTY. In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in part two of this division.

History: Enacted March 21, 1872.

§ 702. SAME. [NAMES AND CLASSIFICATION OF INTERESTS.] The names and classification of interests in real property have only such application to interests in personal property as is in this division of the code expressly provided.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 391, held unconstitutional, see history, § 4 ante.

§ 703. WHAT FUTURE INTERESTS ARE RECOGNIZED. No future interest in property is recognized by the law, except such as is defined in this division of the code.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 392, held unconstitutional, see history, § 4 ante.

ARTICLE II.

CONDITIONS OF OWNERSHIP.

§ 707. Fixing the time of enjoyment.
§ 708. Conditions.
§ 709. Certain conditions precedent void.
§ 710. Conditions restraining marriage. [Void when.]
§ 711. Conditions restraining alienation void.

§ 707. FIXING TIME OF ENJOYMENT. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

History: Enacted March 21, 1872.

§ 708. CONDITIONS. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

History: Enacted March 21, 1872.

§ 709. CERTAIN CONDITIONS PRECEDENT VOID. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 392, held unconstitutional, see history, § 4 ante.

§ 710. CONDITIONS RESTRAINING MARRIAGE. [VOID WHEN.] Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this

does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 218.

§ 711. **CONDITIONS RESTRAINING ALIENATION VOID.** Conditions restraining alienation, when repugnant to the interest created, are void.

History: Enacted March 21, 1872.

ARTICLE III.

RESTRAINTS UPON ALIENATION.

§ 715. How long it may be suspended.
§ 716. Future interests void, which suspend power of alienation.
§ 717. Leases of agricultural land, for over fifteen years, void.
§ 718. Lease of city lots, for over ninety-nine years, void.

§ 715. **HOW LONG IT MAY BE SUSPENDED.** The absolute power of alienation cannot be suspended, by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in a single case mentioned in section seven hundred and seventy-two.

History: Enacted March 21, 1872.

§ 716. **FUTURE INTERESTS VOID, WHICH SUSPEND POWER OF ALIENATION.** Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

History: Enacted March 21, 1872.

§ 717. **LEASE OF AGRICULTURAL LAND, FOR OVER FIFTEEN YEARS, VOID.** No lease or grant of land for agricultural or horticultural purposes for a longer period than fifteen years, in which shall be reserved any rent or service of any kind, shall be valid; provided, that any land of a municipality used for agricultural or horti-

cultural purposes and upon which is discharged sewage or waste water may be leased for a period not exceeding twenty-five years.

History: Enacted March 21, 1872; amended March 26, 1895, Stats. and Amdts. 1895, p. 75; April 19, 1909, Stats. and Amdts. 1909, p. 1000; May 4, 1915, Stats. and Amdts. 1915, p. 349. **In effect** August 8, 1915.

§ 718. **LEASE OF CITY LOTS, FOR OVER NINETY-NINE YEARS, VOID.** No lease or grant of any town or city lot for a longer period than ninety-nine years, in which shall be reserved any rent or service of any kind, shall be valid;

[Property of minor or incompetent.] Provided, that the property of any municipality, or any minor or incompetent person, shall not be leased for a longer period than ten years, excepting that the sewer farm of a municipality and all waters and sewage used or discharged thereon may be leased for a period not exceeding twenty-five years.

History: Enacted March 21, 1872; amended March 20, 1903, Stats. and Amdts. 1903, p. 247; May 1, 1911, Stats. and Amdts. 1911, p. 1391; May 4, 1915, Stats. and Amdts. 1915, p. 349. **In effect** August 8, 1915.

ARTICLE IV.

ACCUMULATIONS.

§ 722. Dispositions of income.
§ 723. Accumulations, when void.
§ 724. Accumulation of income.
§ 725. Other directions, when void in part.
§ 726. Application of income to support, etc., of minor.

§ 722. **DISPOSITIONS OF INCOME.** Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this title in relation to future interests.

History: Enacted March 21, 1872.

§ 723. **ACCUMULATIONS, WHEN VOID.** All directions for the accumulation of the income of property, except such as are allowed by this title, are void.

History: Enacted March 21, 1872.

§ 724. **ACCUMULATION OF INCOME.** An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing sufficient to pass the property out of which the fund is to arise, as follows:

1. **If such accumulation is directed to commence on the creation of the interest** out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. **If such accumulation is directed to commence at any time subsequent to the creation** of the interest out of which the income is to arise, it must commence within the time

in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

History: Enacted March 21, 1872.

§ 725. OTHER DIRECTIONS, WHEN VOID IN PART. If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

History: Enacted March 21, 1872.

§ 726. APPLICATION OF INCOME TO SUPPORT, ETC., OF MINOR. When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund.

History: Enacted March 21, 1872.

CHAPTER III.

RIGHTS OF OWNERS.

§ 732. Increase of property.
§ 733. In certain cases, who entitled to income of property.

§ 732. INCREASE OF PROPERTY. The owner of a thing owns also all its products and accessions.

History: Enacted March 21, 1872.

§ 733. IN CERTAIN CASES, WHO ENTITLED TO INCOME OF PROPERTY. When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest.

History: Enacted March 21, 1872.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

§ 739. Future interests, when defeated.
§ 740. Same. [How defeated.]
§ 741. Future interests, when not defeated.
§ 742. Same. [Contingency happening, how future interest takes effect.]

§ 739. FUTURE INTERESTS, WHEN DEFEATED. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

History: Enacted March 21, 1872.

§ 740. SAME. [HOW DEFEATED.] A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

History: Enacted March 21, 1872.

§ 741. FUTURE INTERESTS, WHEN NOT DEFEATED. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

History: Enacted March 21, 1872.

742. SAME. [CONTINGENGY HAPPENING, HOW FUTURE INTEREST TAKES EFFECT.] No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

History: Enacted March 21, 1872.

TITLE III.

GENERAL DEFINITIONS.

§ 748. Income, what.
§ 749. Time of creation, what.

§ 748. INCOME, WHAT. The income of property, as the term is used in this part of the code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

History: Enacted March 21, 1872.

§ 749. TIME OF CREATION, WHAT. The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest, within the meaning of this part of the code.

History: Enacted March 21, 1872.

PART II.

REAL OR IMMOVABLE PROPERTY.

Title I. General Provisions, § 755.
II. Estates in Real Property, §§ 761-811.
III. Rights and Obligations of Owners, §§ 818-843
IV. Uses and Trusts, §§ 847-871.
V. Powers, §§ 878-940. [Repealed.]

TITLE I.

GENERAL PROVISIONS.

§ 755. Real property, how governed.

§ 755. REAL PROPERTY, HOW GOVERNED. Real property within this state is governed by the law of this state, except where the title is in the United States.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 218.

TITLE II.

ESTATES IN REAL PROPERTY.

Chapter I. Estates in General, §§ 761-781.
II. Termination of Estates, §§ 789-793.
III. Servitude, §§ 801-811.

CHAPTER I.

ESTATES IN GENERAL.

§ 761. Enumeration of estates.
§ 762. What estate a fee simple.
§ 763. Conditional fees and estates tail abolished.
§ 764. Certain remainders valid.
§ 765. Freeholds. Chattels real. Chattel interests.
§ 766. Estate for life of a third person, when a freehold, etc.
§ 767. Future estates, what.
§ 768. Reversions.
§ 769. Remainders.
§ 770. Suspended ownership.
§ 771. Suspension by trust.
§ 772. Contingent remainder in fee.
§ 773. Remainders, future and contingent estates, how created.
§ 774. Limitation of successive estates for life.
§ 775. Remainder upon estates for life of third person.
§ 776. Contingent remainder on a term of years.
§ 777. Remainder of estates for life.
§ 778. Remainder upon a contingency.
§ 779. Heirs of a tenant for life, when to take as purchasers.
§ 780. Construction of certain remainders.
§ 781. Effect of power of appointment.

§ 761. ENUMERATION OF ESTATES. Estates in real property, in respect to the duration of their enjoyment, are either:

1. Estates of inheritance or perpetual estates;
2. Estates for life;
3. Estates for years; or,
4. Estates at will.

History: Enacted March 21, 1872.

§ 762. **WHAT ESTATE A FEE SIMPLE.** Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 218; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 322, held unconstitutional, see history, § 4 ante.

§ 763. **CONDITIONAL FEES AND ESTATES TAIL ABOLISHED.** Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple; and if no valid remainder is limited thereon, is a fee simple absolute.

History: Enacted March 21, 1872.

§ 764. **CERTAIN REMAINDERS VALID.** Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession on the death of the first taker, without issue living at the time of his death.

History: Enacted March 21, 1872.

§ 765. **FREEHOLDS. CHATTELS REAL. CHATTEL INTERESTS.** Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution.

History: Enacted March 21, 1872.

§ 766. **ESTATE FOR LIFE OF THIRD PERSON, WHEN A FREEHOLD, ETC.** An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 218.

§ 767. **FUTURE ESTATES, WHAT.** A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time.

History: Enacted March 21, 1872.

§ 768. **REVERSIONS.** A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

History: Enacted March 21, 1872.

§ 769. **REMAINDERS.** When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

History: Enacted March 21, 1872.

§ 770. **SUSPENDED OWNERSHIP.** The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 218.

§ 771. **SUSPENSION BY TRUST.** The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation, within the meaning of section seven hundred and fifteen.

History: Enacted March 21, 1872.

§ 772. **CONTINGENT REMAINDER IN FEE.** A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

History: Enacted March 21, 1872.

§ 773. **REMAINDERS, FUTURE AND CONTINGENT ESTATES, HOW CREATED.** Subject to the rules of this title, and of part one of this division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this title.

History: Enacted March 21, 1872.

§ 774. **LIMITATION OF SUCCESSIVE ESTATES FOR LIFE.** Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons, the remainder, if valid

in its creation, takes effect in the same manner as if no other life estate had been created.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 219.

§ 775. **REMAINDER UPON ESTATES FOR LIFE OF THIRD PERSON.** No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years, unless it is for the whole residue of such term.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 219.

§ 776. **CONTINGENT REMAINDER ON A TERM OF YEARS.** A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder.

History: Enacted March 21, 1872.

§ 777. **REMAINDER OF ESTATES FOR LIFE.** No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

History: Enacted March 21, 1872.

§ 778. **REMAINDER UPON A CONTINGENCY.** A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

History: Enacted March 21, 1872.

§ 779. **HEIRS OF A TENANT FOR LIFE, WHEN TO TAKE AS PURCHASERS.** When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life

estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

History: Enacted March 21, 1872.

§ 780. **CONSTRUCTION OF CERTAIN REMAINDERS.** When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

History: Enacted March 21, 1872.

§ 781. **EFFECT OF POWER OF APPOINTMENT.** A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

History: Enacted March 21, 1872.

CHAPTER II.

TERMINATION OF ESTATES.

§ 789. Tenancy at will may be terminated by notice.
§ 790. Effect of notice.
§ 791. Re-entry, when and how to be made.
§ 792. Summary proceedings in certain cases provided for.
§ 793. Notice not necessary before action.

§ 789. TENANCY AT WILL MAY BE TERMINATED BY NOTICE. A tendency [tenancy] or other estate at will, however created, may be determined by the landlord's giving notice in writing to the tenant, in the manner prescribed by section eleven hundred and sixty-two of the Code of Civil Procedure, to remove from the premises within a period of not less than thirty days, to be specified in the notice.

History: Enacted March 21, 1872; amended February 15, 1911, Stats. and Amdts. 1911, p. 61.

§ 790. EFFECT OF NOTICE. After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession.

History: Enacted March 21, 1872.

§ 791. RE-ENTRY, WHEN AND HOW TO BE MADE. Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued, upon three days' notice, as provided in sections eleven hundred and sixty-one and eleven hundred and sixty-two, Code of Civil Procedure.

History: Enacted March 21, 1872.

§ 792. **SUMMARY PROCEEDINGS IN CERTAIN CASES PROVIDED FOR.** Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully detained, are provided for in sections eleven hundred and fifty-nine to eleven hundred and seventy-five, both inclusive, of the Code of Civil Procedure.

History: Enacted March 21, 1872.

§ 793. **NOTICE NOT NECESSARY BEFORE ACTION.** An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time, after the right to re-enter has accrued, without the notice prescribed in section seven hundred and ninety-one.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 392, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 599.

CHAPTER III.

SERVITUDES.

§ 801. Servitudes attached to land.
§ 802. Servitudes not attached to land.
§ 803. Designation of estates.
§ 804. By whom grantable.
§ 805. By whom held.
§ 806. Extent of servitudes.
§ 807. Apportioning easements.
§ 808. Rights of owner of future estate.
§ 809. Actions by owner and occupant of dominant tenement.
§ 810. Actions by owner of servient tenement.
§ 811. How extinguished.

§ 801. **SERVITUDES ATTACHED TO LAND.** The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;

2. The right of fishing;

3. The right of taking game;

4. The right of way;

5. The right of taking water, wood, minerals, and other things;

6. The right of transacting business upon land;

7. The right of conducting lawful sports upon land;

8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;

9. The right of receiving water from or discharging the same upon land;

10. The right of flooding land;

11. The right of having water flow without diminution or disturbance of any kind.

12. The right of using a wall as a party-wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping the same on land;
16. The right of a seat in church;
17. The right of burial.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 392, held unconstitutional, see history, § 4 ante.

§ 802. **SERVITUDES NOT ATTACHED TO LAND.** The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:
1. The right to pasture, and of fishing and taking game.
2. The right of a seat in church.
3. The right of burial.
4. The right of taking rents and tolls.
5. The right of way.
6. The right of taking, water, wood, minerals, or other things.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 219.

§ 803. **DESIGNATION OF ESTATES.** The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

History: Enacted March 21, 1872.

§ 804. **BY WHOM GRANTABLE.** A servitude can be created only by one who has a vested estate in the servient tenement.

History: Enacted March 21, 1872.

§ 805. BY WHOM HELD. A servitude thereon cannot be held by the owner of the servient tenement.

History: Enacted March 21, 1872.

§ 806. EXTENT OF SERVITUDES. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

History: Enacted March 21, 1872.

§ 807. APPORTIONING EASEMENTS. In case of partition of the dominant tenement the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

History: Enacted March 21, 1872.

§ 808. RIGHTS OF OWNER OF FUTURE ESTATE. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

History: Enacted March 21, 1872.

§ 809. ACTIONS BY OWNER AND OCCUPANT OF DOMINANT TENEMENT. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

History: Enacted March 21, 1872.

§ 810. ACTIONS BY OWNER OF SERVIENT TENEMENT. The owner in fee of a servient tenement may main-

tain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

History: Enacted March 21, 1872.

811. HOW EXTINGUISHED. A servitude is extinguished:

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person;

2. By the destruction of the servient tenement;

3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise; or,

4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

History: Enacted March 21, 1872.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS

Chapter I. Rights of Owners, §§ 818-834.
II. Obligations of Owners, §§ 840-843.

CHAPTER I.

RIGHTS OF OWNERS.

Article I. Incidents of Ownership, §§ 818-827.
II. Boundaries, §§ 829-834.

ARTICLE I.

INCIDENTS OF OWNERSHIP.

§ 818. Rights of tenant for life.
§ 819. Rights of tenant for years, etc.
§ 820. Same.
§ 821. Rights of grantees of rents and reversion.
§ 822. Assignee of lessee, remedies of lessor against.
§ 823. Rights of lessees and their assignees, etc.
§ 824. Remedy on leases for life.
§ 825. Rent dependent on life.
§ 826. Remedy of reversioners, etc.
§ 827. Leases, change of terms. [Notice.]

§ 818. RIGHTS OF TENANT FOR LIFE. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

History: Enacted March 21, 1872.

§ 819. **RIGHTS OF TENANT FOR YEARS, ETC.** A tenant for years or at will, unless he is a wrong-doer by holding over, may occupy the buildings, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy.

History: Enacted March 21, 1872.

§ 820. **SAME.** A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section.

History: Enacted March 21, 1872.

§ 821. **RIGHTS OF GRANTEES OF RENTS AND REVERSION.** A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had.

History: Enacted March 21, 1872.

§ 822. **ASSIGNEE OR LESSEE, REMEDIES OF LESSOR AGAINST.** Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 220; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 393, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 599.

§ 823. **RIGHTS OF LESSEES AND THEIR ASSIGNEES, ETC.** Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

History: Enacted March 21, 1872.

§ 824. **REMEDY ON LEASES FOR LIFE.** Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

History: Enacted March 21, 1872.

§ 825. **RENT DEPENDENT ON LIFE.** Rent dependent on the life of a person may be recovered after as well as before his death.

History: Enacted March 21, 1872.

§ 826. **REMEDY OF REVERSIONERS, ETC.** A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

History: Enacted March 21, 1872.

§ 827. **LEASE, CHANGE OF TERM. [NOTICE.]** In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least thirty days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month.

The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

History: Enacted March 30, 1874, Code Amdts. 1873-4, p. 220; amended February 26, 1907, Stats. and Amdts. 1907, p. 58, Kerr's Stats. and Amdts. 1906-7, p. 423. **In effect** from and after passage.

ARTICLE II.

BOUNDARIES.

§ 829. Rights of owner.
§ 830. Boundaries by water.
§ 831. Boundaries by ways.
§ 832. Lateral and subjacent support.
§ 833. Trees whose trunks are wholly on land of one.
§ 834. Line trees.

§ 829. RIGHTS OF OWNER. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

History: Enacted March 21, 1872.

§ 830. BOUNDARIES BY WATER. Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on tide-water, takes to ordinary high-water mark; when it borders upon a navigable lake or stream, where there is no tide, the owner takes to the edge of the lake or stream, at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 220; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 393, held unconstitutional, see history, § 4 ante.

§ 831. BOUNDARIES BY WAYS. An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown.

History: Enacted March 21, 1872.

§ 832. **LATERAL AND SUBJACENT SUPPORT.** Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 221. This section as originally enacted was taken from proposed Civil Code of New York.—Sullivan vs. Zeiner, 98 Cal. 346, 348, 33 Pac. Rep. 209, 20 L. R. A. 730.

South Dakota Comp. Laws, § 2784, an exact copy of this section.—See Novotny vs. Danforth, 9 S. D. 412, 69 N. W. Rep. 585.

Utah Comp. Laws, § 2784, is substantially the same as this section, except that it omits the words "in its natural condition" and also the words "when improved."—Ulrick vs. Dakota L. & T. Co., 2 S. D. 285, 49 N. W. Rep. 1054.

§ 833. **TREES WHOSE TRUNKS ARE WHOLLY ON LAND OF ONE.** Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

History: Enacted March 21, 1872.

§ 834. **LINE TREES.** Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common.

History: Enacted March 21, 1872.

CHAPTER II.

OBLIGATIONS OF OWNERS.

§ 840. Duties of tenant for life.
§ 841. Monuments and fences.
§ 842. Owners of ditches, flumes, etc. Liability to each other.
§ 843. Neglect to pay proportion of expenses; liability in action.

§ 840. DUTIES OF TENANT FOR LIFE. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

History: Enacted March 21, 1872.

§ 841. MONUMENTS AND FENCES. Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them;

2. The fences between them, unless one of them chooses to let his land lie without fencing; in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

History: Enacted March 21, 1872.

This section is apparently based on 1 Rev. St. N. Y. 350, § 30. —See Ryan vs. Rochester & S. R. Co., 9 How. Pr. (N. Y.) 453, 455.

As to lawful fence in counties named, see Act 1850, as amended by Act April 3, 1860 (Stats. 1860, p. 141). Gonzales vs. Wasson, 51 Cal. 295, 297.

§ 842. OWNERS OF DITCHES, FLUMES, ETC. LIABILITY TO EACH OTHER. When two or more persons are associated by agreement in the use of a ditch, flume,

pipe-line or other conduit for the conveyance of water, or who are using such ditch, flume, pipe-line or other conduit, or any part thereof, for the irrigation of land or for any other lawful purpose, to the construction of which they or their grantors have contributed, he is liable to the others for the reasonable expenses of maintaining and repairing the same, and of distributing such water in proportion to the share to which he is entitled in the use of the water.

History: Proposed by Code Commission and enacted March 16, 1901, Stats. Amdts. 1900-1, p. 393, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 600.

§ 843. NEGLECT TO PAY PROPORTION OF EXPENSES; LIABILITY IN ACTION. If any one of them neglects, after demand in writing, to pay his proportion of such expenses, he is liable therefor in an action for contribution, and in any judgment obtained against him interest from the time of such demand must be included. The action authorized by this section must be brought by any or all of the parties who have contributed more than his or their just proportion of such expenses, and may be joint or several, and therein plaintiff may recover as costs, reasonable counsel fees, to be fixed by the court.

History: Proposed by Code Commission and enacted March 16, 1901, Stats. and Amdts. 1900-1, p. 393, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 600.

TITLE IV.

USES AND TRUSTS.

§ 847. What uses and trusts may exist.
§ 848. Right to possession of land creates legal ownership [repealed].
§ 849. Certain trusts unaffected [repealed].
§ 850. Trustees of estate for use of another take no interest [repealed].
§ 851. Preceding sections qualified [repealed].
§ 852. Trust must be in writing.
§ 853. Transfer to one for money paid by another. [Trust presumed].
§ 854. Rights of creditors [repealed].
§ 855. Section eight hundred and fifty-three qualified [repealed].
§ 856. Purchasers protected.
§ 857. For what purposes express trusts may be created.
§ 858. Vesting of mortgage powers.
§ 859. Profits of land liable to creditors in certain cases.
§ 860. Exercise of vested power.
§ 861. Creation of certain powers not prohibited [repealed].
§ 862. Land, etc., to descend to persons entitled [repealed].
§ 863. Trustees of express trusts to have whole estate.
§ 864. Author of trust may devise, etc.
§ 865. Title of grantor of trust property.
§ 866. Interests remaining in grantor of express trust.
§ 867. Restraining disposition of trusts.
§ 868. Powers over trust of party interested [repealed].
§ 869. Effect of omitting trust in conveyance.
§ 870. Certain sales, etc., by trustees, void.
§ 871. When estate of trustee to cease.

§ 847. WHAT USES AND TRUSTS MAY EXIST.

Uses and trusts in relation to real property are those only which are specified in this title.

History: Enacted March 21, 1872. See history to § 857 post.

§ 848. RIGHT TO POSSESSION OF LAND CREATES LEGAL OWNERSHIP [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 221.

§ 849. CERTAIN TRUSTS UNAFFECTED [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 221.

§ 850. TRUSTEES OF ESTATE FOR USE OF ANOTHER TAKE NO INTEREST [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 221.

§ 851. PRECEDING SECTIONS QUALIFIED [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 221.

§ 852. TRUST MUST BE IN WRITING. No trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law.

History: Enacted March 21, 1872.

§ 853. TRANSFER TO ONE FOR MONEY PAID BY ANOTHER. [TRUST PRESUMED.] When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 221.

§ 854. RIGHTS OF CREDITORS [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 221.

§ 855. SECTION EIGHT HUNDRED AND FIFTY-THREE QUALIFIED [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 221.

§ 856. PURCHASERS PROTECTED. No implied or resulting trust can prejudice the rights of a purchaser or encumbrancer of real property for value and without notice of the trust.

History: Enacted March 21, 1872.

§ 857. FOR WHAT PURPOSES EXPRESS TRUSTS MAY BE CREATED. Express trusts may be created for any of the following purposes:

1. To sell and convey real property and to hold or reinvest or apply or dispose of the proceeds in accordance with the instrument creating the trust.

2. To mortgage or lease real property for the benefit of annuitants, or devisees or legatees, or other beneficiaries, or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of real property, and pay them to, or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of such person, or for any shorter term, subject to the rules of title two of division two of part one of this code.

4. To receive the rents and profits of real property and to accumulate the same for the purposes and within the limits prescribed by the same title; or

5. To convey, partition, divide, distribute or allot real

property in accordance with the instrument creating the trust, subject to the limitations of the same title.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 221; May 30, 1913, Stats. and Amdts. 1913, p. 438. **In effect** August 10, 1913.

§ 858. **VESTING OF MORTGAGE POWERS.** Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is to be deemed a part of the security, and vests in any person who, by assignment, becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded.

History: Enacted March 21, 1872; original provision repealed and above provision substituted therefor by Act March 30, 1874, Code Amdts. 1873-4, p. 222.

The above section a re-enactment of section 895 post (repealed).—In re Estate Fair, 132 Cal. 523, 557, 84 Am. St. Rep. 70, 60 Pac. Rep. 442, 64 Id. 1000.

§ 859. **PROFITS OF LAND LIABLE TO CREDITORS IN CERTAIN CASES.** Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 394, held unconstitutional, see history, § 4 ante.

This section is taken from 1 N. Y. Rev. Stats. 729, § 57, which has received construction in Kilroy vs. Wood, 42 Hun (N. Y.) 636.—See Magner vs. Crooks, 139 Cal. 640, 642, 73 Pac. Rep. 585.

§ 860. EXERCISE OF VESTED POWER. Where a power is vested in several persons, all must unite in its execution; but, in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.

History: Enacted March 21, 1872; original section repealed and above provision substituted therefor by Act March 30, 1874, Code Amdts. 1873-4, p. 222.

The above section a verbatim re-enactment of section 900 post (repealed).—In re Estate Fair, 132 Cal. 523, 557, 84 Am. St. Rep. 70, 60 Pac. Rep. 442, 64 Id. 1000.

§ 861. CREATION OF CERTAIN POWERS NOT PROHIBITED [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 222.

§ 862. LAND, ETC., TO DESCEND TO PERSONS ENTITLED [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 222.

§ 863. TRUSTEES OF EXPRESS TRUSTS TO HAVE WHOLE ESTATE. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

History: Enacted March 21, 1872.

§ 864. AUTHOR OF TRUST MAY DEVISE, ETC. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the

event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

History: Enacted March 21, 1872.

§ 865. TITLE OF GRANTOR OF TRUST PROPERTY. The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

History: Enacted March 21, 1872.

§ 866. INTERESTS REMAINING IN GRANTOR OF EXPRESS TRUST. Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors.

History: Enacted March 21, 1872.

§ 867. RESTRAINING DISPOSITION OF TRUSTS. The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 223.

§ 868. POWERS OVER TRUST OF PARTY INTERESTED [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 223.

§ 869. EFFECT OF OMITTING TRUST IN CONVEYANCE. Where an express trust is created in relation to real property, but is not contained or declared in the grant to

the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustee without notice, and for a valuable consideration.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 223.

§ 870. CERTAIN SALES, ETC., BY TRUSTEES, VOID. Where a trust in relation to real property is expressed in the instrument creating the estate every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 394, held unconstitutional, see history, § 4 ante.

§ 871. WHEN ESTATE OF TRUSTEE TO CEASE. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

History: Enacted March 21, 1872.

TITLE V.

POWERS

[This title, embracing sections 878 to and including 940 of the original code, was repealed by Act March 30, 1874, Code Amdts. 1873-4, p. 223.]

1. **Purpose of title.**—This title was intended to limit and restrict the power of the owners of real property.—In re Estate Fair, 132 Cal. 523, 557, 84 Am. St. Rep. 70, 60 Pac. Rep. 442, 64 Id. 1000.

2. **Codes authorize creation of power.**—Notwithstanding repeal of title in regard to powers, "in one respect the creation of a power is still authorized by the codes."—Sacramento Bank vs. Alcorn, 121 Cal. 379, 384, 53 Pac. Rep. 813.

PART III.

PERSONAL AND MOVABLE PROPERTY.

Title I. Personal Property in General, §§ 946-947.
II. Particular Kinds of Personal Property, §§ 953-994.

TITLE I.

PERSONAL PROPERTY IN GENERAL.

§ 946. By what law governed.
§ 947. Future interests in perishable property, how protected [repealed].

§ 946. BY WHAT LAW GOVERNED. If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 223; re-enacted as above March 9, 1876, Code Amdts. 1875-6, p. 78.

§ 947. FUTURE INTERESTS IN PERISHABLE PROPERTY, HOW PROTECTED [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 223.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY

Chapter I. Things in Action, §§ 953-955.
II. Shipping, §§ 960-973.
III. Products of the Mind, §§ 980-985.
IV. Other Kinds of Personal Property, §§ 991-995.

CHAPTER I.

THINGS IN ACTION.

§ 953. Things in action defined.
§ 954. Transfer and survivorship.
§ 955. Assignment of wages.

§ 953. THINGS IN ACTION DEFINED. A thing in action is a right to recover money or other personal property by a judicial proceeding.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 224.

§ 954. TRANSFER AND SURVIVORSHIP. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

History: Enacted March 21, 1872. See Practice Act 1851, § 4, and other statutes referred to in brief in Gray vs. Garrison, 9

Cal. 325, 327; Act May 15, 1854, § 4, and Act May 7, 1855, Ryan vs. Maddux, 6 Cal. 247, 248; Acts 1851, 1854, 1855, and 1864, referred to in More vs. Massini, 32 Cal. 590, 593.

South Dakota Comp. Laws, § 2877 is identical.—Erickson vs. Brookings Co., 3 S. D. 434, 53 N. W. Rep. 857.

§ 955. **ASSIGNMENT OF WAGES.** No assignment of, or order for, wages or salary shall be valid unless made in writing by the person by whom the said wages or salary are earned and no assignment of, or order for, wages or salary made by a married person shall be valid unless the written consent of the husband or wife of the person making such assignment or order is attached to such assignment or order; and no assignment or order for wages or salary of a minor shall be valid unless the written consent of a parent or the guardian of such minor is attached to such order or assignment. No assignment of, or order for, wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for the necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

[Power of attorney revocable.] Any power of attorney to assign or collect wages or salary shall be revocable at any time by the maker thereof.

History: Enacted June 7, 1913, Stats. and Amdts. 1913. p. 537. **In effect** August 10, 1913.

CHAPTER II.

SHIPPING

Article I. General Provisions, §§ 960-966
II. Rules of Navigation, §§ 970-973.

ARTICLE I.

GENERAL PROVISIONS.

§ 960. Definition of a ship.
§ 961. Appurtenances and equipments.
§ 962. Foreign and domestic navigation.
§ 963. Foreign and domestic ships distinguished.
§ 964. Several owners.
§ 965. Owner for voyage.
§ 966. Registry, etc.

§ 960. DEFINITION OF A SHIP. The term "ship or shipping," when used in this code, includes steamboats, sailing vessels, canal-boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

History: Enacted March 21, 1872; amended March 30 1874, Code Amdts. 1873-4, p. 224.

§ 961. APPURTENANCES AND EQUIPMENTS. All things, belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances.

History: Enacted March 21, 1872.

§ 962. **FOREIGN AND DOMESTIC NAVIGATION.** Ships are engaged either in foreign or domestic navigation, or in the fisheries. Ships are engaged in foreign navigation when passing to or from a foreign country; and in domestic navigation, when passing from place to place within the United States.

History: Enacted March 21, 1872.

§ 963. **FOREIGN AND DOMESTIC SHIPS DISTINGUISHED.** A ship in a port of the state to which it belongs is called a domestic ship; in another port it is called a foreign ship.

History: Enacted March 21, 1872.

§ 964. **SEVERAL OWNERS.** If a ship belongs to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction.

History: Enacted March 21, 1872.

§ 965. **OWNER FOR VOYAGE.** If the owner of a ship commits its possession and navigation to another, that other, and not the owner, is responsible for its repairs and supplies.

History: Enacted March 21, 1872.

§ 966. **REGISTRY, ETC.** The registry, enrolment, and license of ships are regulated by acts of Congress.

History: Enacted March 21, 1872.

ARTICLE II.

RULES OF NAVIGATION.

§ 970. Collisions:
1. Rules as to ships meeting each other.
2. The rule for sailing vessels.
3. Rules for steamers in narrow channels.
4. Same. [Pass on starboard side.]
5. Rules for steam vessels on different courses.
6. Meeting of steamers.
§ 971. Collision from breach of rules.
§ 972. Breaches of such rules to imply wilful default.
§ 973. Loss, how apportioned.

§ 970. **COLLISIONS.** In the case of ships meeting, the following rules must be observed, in addition to those prescribed by that part of the Political Code which relates to navigation:

1. **Rules as to ships meeting each other.** Whenever any ship, whether a steamer or sailing ship, proceeding in one direction, meets another ship, whether a steamer or sailing ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other; and this rule applies to all steamers and all sailing ships, whether on the port or starboard tack, and whether close-hauled or not, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to a due regard to the dangers of navigation, and, as regards sailing ships on the starboard tack close-hauled, to the keeping such ships under command;

2. **Rules for sailing vessels.** In the case of sailing vessels, those having the wind fair must give way to those on a

wind. When both are going by the wind, the vessel on the starboard tack must keep her wind, and the one on the larboard tack bear up strongly, passing each other on the larboard hand. When both vessels have the wind large or abeam, and meet, they must pass each other in the same way on the larboard hand, to effect which two last-mentioned objects the helm must be put to port. Steam vessels must be regarded as vessels navigating with a fair wind, and should give way to sailing vessels on a wind of either tack;

3. **Rules for steamers in narrow channels.** A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of the fairway or mid channel which lies on the starboard side of the steamer;

4. **Same. [Pass on starboard side.]** A steamer when passing another steamer in such channel, must always leave the other upon the larboard side;

5. **Rules for steam vessels on different courses.** When steamers must inevitably or necessarily cross so near that by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other;

6. **Meeting of steamers.** The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within the sound of the steam-whistle, or by the regulations concerning lights upon steamers, prescribed by or under authority of the laws of the United States.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 394, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 600.

§ 971. **COLLISION FROM BREACH OF RULES.** If it appears that a collision was occasioned by failure to observe any rule of the foregoing section, the owner of the ship by

which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary.

History: Enacted March 21, 1872.

§ 972. **BREACHES OF SUCH RULES TO IMPLY WILFUL DEFAULT.** Damage to person or property arising from the failure of a ship to observe any rule of section nine hundred and seventy, must be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary.

History: Enacted March 21, 1872.

§ 973. **LOSS, HOW APPORTIONED.** Losses caused by collision are to be borne as follows:

1. **If either party was exclusively in fault** he must bear his own loss, and compensate the other for any loss he has sustained;

2. **If neither was in fault,** the loss must be borne by him on whom it falls;

3. **If both were in fault,** the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned;

4. **If it cannot be ascertained where the fault lies,** the loss must be equally divided.

History: Enacted March 21, 1872.

CHAPTER III.

PRODUCTS OF THE MIND.

§ 980. How far the subject of ownership.
§ 981. Joint authorship.
§ 982. Transfer.
§ 983. Effect of publication.
§ 984. Subsequent inventor, author, etc.
§ 985. Private writings.

§ 980. HOW FAR THE SUBJECT OF OWNERSHIP. The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product and the representations or expressions thereof made by him remain in his possession.

History: Enacted March 21, 1872.

§ 981. JOINT AUTHORSHIP. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned, is owned by them as follows:

1. If the product is single, in equal proportions;

2. If it is not single, in proportion to the contribution of each.

History: Enacted March 21, 1872.

§ 982. TRANSFER. The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.

History: Enacted March 21, 1872.

§ 983. **EFFECT OF PUBLICATION.** If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this state is concerned.

History: Enacted March 21, 1872.

§ 984. **SUBSEQUENT INVENTOR, AUTHOR, ETC.** If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

History: Enacted March 21, 1872.

§ 985. **PRIVATE WRITINGS.** Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

History: Enacted March 21, 1872.

CHAPTER IV.

OTHER KINDS OF PERSONAL PROPERTY.

§ 991. Trade-marks and signs.
§ 992. Good-will of business.
§ 993. Good-will and name, transfer of.
§ 994. Title deeds.
§ 995. "Tare" on baled hops.

§ 991. **TRADE-MARKS AND SIGNS.** One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trademark, any form, symbol, or name which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 224.

See Act 1863.—Derringer vs. Plate, 29 Cal. 292, 294, 87 Am. Dec. 170.

§ 992. **GOOD-WILL OF BUSINESS.** The good-will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

History: Enacted March 21, 1872.

§ 993. **GOOD-WILL AND NAME, TRANSFER OF.** The good-will of a business is property, transferable like any other, and the person transferring it may transfer with

it the right of using the name under which the business is conducted.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 395, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 602.

§ 994. **TITLE DEEDS.** Instruments essential to the title of real property, and which are not kept in a public office as a record, pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title.

History: Enacted March 21, 1872.

§ 995. **"TARE" ON BALED HOPS.** There shall be allowed on baled hops a tare at the rate of two per centum of the weight of the bale for the cloth and other material used in baling; that is, the tare shall be at the rate of two pounds per hundred on the weight of the bale.

History: Enacted March 21, 1907, Stats. and Amdts. 1907, p. 845, Kerr's Stats. and Amdts. 1906-7, p. 423.

PART IV.

ACQUISITION OF PROPERTY

Title I Modes in which property may be acquired, §§ 1000-1001.

II. Occupancy, §§ 1006-1007.

III. Accession, §§ 1013-1033.

IV. Transfer, §§ 1039-1231.

V. Homesteads, §§ 1237-1269c.

VI. Wills, §§ 1270-1377.

VII. Succession, §§ 1383-1408.

VIII. Water Rights, §§ 1410-1422.

IX. Hydraulic Mining, §§ 1424-1425.

X. Locating Mining Claims, Tunnel Rights, Mill-sites, §§ 1426-1426s.

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED

§ 1000. Property, how acquired.
§ 1001. Acquisition of property by exercise of eminent domain.

§ 1000. PROPERTY, HOW ACQUIRED. Property is acquired by:

1. Occupancy;
2. Accession;
3. Transfer;
4. Will; or,
5. Succession.

History: Enacted March 21, 1872.

§ 1001. ACQUISITION OF PROPERTY BY EXERCISE OF EMINENT DOMAIN. Any person may, without further legislative action, acquire private property for any use specified in section twelve hundred and thirty-eight of the Code of Civil Procedure either by consent of the owner or by proceedings had under the provisions of title seven, part three, of the Code of Civil Procedure; and any person seeking to acquire property for any of the uses mentioned in such title is "an agent of the state," or a "person in charge of such use," within the meaning of those terms as used in such title. This section shall be in force from and after the fourth day of April, eighteen hundred and seventy-two.

History: Enacted March 21, 1872.

TITLE II.

OCCUPANCY.

§ 1006. Simple occupancy.
§ 1007. Prescription.

§ 1006. **SIMPLE OCCUPANCY.** Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession; provided, however, that the title conferred by such occupancy shall not be a sufficient interest in real property to entitle the occupant or his pivies to commence or maintain an action to quiet title under the provisions of section seven hundred thirty-eight of the Code of Civil Procedure of this state, unless such occupancy shall have ripened into title by prescription.

History: Enacted March 21, 1872; amended May 29, 1915, Stats. and Amdts. 1915, p. 938. **In effect** August 8, 1915.

§ 1007. **PRESCRIPTION.** Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

History: Enacted March 21, 1872.

TITLE III.

ACCESSION.

Chapter I. To Real Property, §§ 1013-1019.
II. To Personal Property, §§ 1025-1033.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

§ 1013. Fixtures.
§ 1014. Alluvion.
§ 1015. Sudden removal of bank.
§ 1016. Islands, in navigable streams.
§ 1017. [Same.] In unnavigable streams.
§ 1018. Islands formed by division of stream.
§ 1019. Fixtures, removal of by tenant.

§ 1013. **FIXTURES.** When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section ten hundred and nineteen, belongs to the owner of the land, unless he chooses to require the former to remove it.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 224.

§ 1014. **ALLUVION.** Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 395, held unconstitutional, see history, § 4 ante.

§ 1015. SUDDEN REMOVAL OF BANK. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

History: Enacted March 21, 1872.

§ 1016. ISLANDS, IN NAVIGABLE STREAMS. Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary.

History: Enacted March 21, 1872.

§ 1017. [SAME.] IN UNNAVIGABLE STREAMS. An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 395, held unconstitutional, see history, § 4 ante.

§ 1018. ISLANDS FORMED BY DIVISION OF STREAM. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

History: Enacted March 21, 1872.

§ 1019. FIXTURES, REMOVAL OF BY TENANT. A tenant may remove from the demised premises, any time dur-

ing the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

History: Original section, relating to abandonment of bed of stream, enacted March 21, 1872, was repealed and the above provision substituted therefor by Act March 30, 1874, Code Amdts. 1873-4, p. 225.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

§ 1025. Accession by uniting several things.
§ 1026. Principal part, what.
§ 1027. Same. [The more valuable of bulky.]
§ 1028. Uniting materials and workmanship.
§ 1029. Inseparable materials.
§ 1030. Materials of several owners.
§ 1031. Wilful trespassers.
§ 1032. Owner may elect between the thing and its value.
§ 1033. Wrong-doer liable in damages.

§ 1025. ACCESSION BY UNITING SEVERAL THINGS. When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

History: Enacted March 21, 1872.

§ 1026. PRINCIPAL PART, WHAT. That part is to be deemed the principal to which the other has been united only for the use, ornament, or completion of the former,

unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

History: Enacted March 21, 1872.

§ 1027. **SAME. [THE MORE VALUABLE OR BULKY.]** If neither can be considered the principal, within the rule prescribed by the last section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

History: Enacted March 21, 1872.

§ 1028. **UNITING MATERIALS AND WORKMANSHIP.** If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

History: Enacted March 21, 1872.

§ 1029. **INSEPARABLE MATERIALS.** Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors; in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

History: Enacted March 21, 1872.

§ 1030. **MATERIALS OF SEVERAL OWNERS.** When a thing has been formed by the admixture of several mate-

rials of different owners, and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

History: Enacted March 21, 1872.

§ 1031. **WILFUL TRESPASSERS.** The foregoing sections of this article are not applicable to cases in which one wilfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

History: Enacted March 21, 1872.

§ 1032. **OWNER MAY ELECT BETWEEN THE THING AND ITS VALUE.** In all cases where one whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof; or where he is entitled to the product, the value thereof in place of the product.

History: Enacted March 21, 1872.

§ 1033. **WRONG-DOER LIABLE IN DAMAGES.** One who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this chapter.

History: Enacted March 21, 1872.

TITLE IV.

TRANSFER

The obligations of the parties to a transfer for consideration, or to a contract of hiring, are regulated by the titles on sales, on exchange, and on hiring. Transfers in trust for the benefit of creditors are regulated by the part on debtor and creditor.—**Commissioners' note.**

Chapter I. Transfer in General, §§ 1039-1085.
II. Transfer of Real Property, §§ 1091-1115.
III. Transfer of Personal Property, §§ 1135-1153.
IV. Recording Transfers of Real Property, §§ 1158-1218.
V. Unlawful Transfers, §§ 1227-1231.

CHAPTER I.

TRANSFERS IN GENERAL

Article I. Definition of Transfer, §§ 1039-1040
II. What May Be Transferred, §§ 1044-1047.
III. Mode of Transfer, §§ 1052-1060.
IV. Interpretation of Grants, §§ 1066-1072.
V. Effect of Transfer, §§ 1083-1085.

ARTICLE I.

DEFINITION OF TRANSFER.

§ 1039. Transfer, what.
§ 1040. Voluntary transfer.

§ 1039. TRANSFER, WHAT. Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

History: Enacted March 21, 1872.

§ 1040. VOLUNTARY TRANSFER. A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

History: Enacted March 21, 1872.

ARTICLE II.

WHAT MAY BE TRANSFERRED.

§ 1044. What may be transferred.
§ 1045. Possibility.
§ 1046. Right of re-entry can be transferred.
§ 1047. Owner ousted of possession may transfer.

§ 1044. WHAT MAY BE TRANSFERRED. Property of any kind may be transferred, except as otherwise provided by this article.

History: Enacted March 21, 1872.

§ 1045. POSSIBILITY. A mere possibility, not coupled with an interest, cannot be transferred.

History: Enacted March 21, 1872.

§ 1046. **RIGHT OF RE-ENTRY CAN BE TRANSFERRED.** A right of re-entry, or of repossession for breach of condition subsequent, can be transferred.

History: Enacted March 21, 1872.

§ 1047. **OWNER OUSTED OF POSSESSION MAY TRANSFER.** Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

History: Enacted March 21, 1872.

ARTICLE III.

MODE OF TRANSFER.

§ 1052. When oral.
§ 1053. Grant, what.
§ 1054. Delivery necessary.
§ 1055. Date.
§ 1056. Delivery to grantee is necessarily absolute.
§ 1057. Delivery in escrow.
§ 1058. Surrendering or canceling grant does not reconvey.
§ 1059. Constructive delivery.
§ 1060. Gratuitous grants take effect immediately; exception [repealed].

§ 1052. **WHEN ORAL.** A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

History: Enacted March 21, 1872.

§ 1053. **GRANT, WHAT.** A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant," in this and the next two articles, includes all these instruments, unless it is specially applied to real property.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 225.

§ 1054. **DELIVERY NECESSARY.** A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.

History: Enacted March 21, 1872.

§ 1055. **DATE.** A grant duly executed is presumed to have been delivered at its date.

History: Enacted March 21, 1872.

§ 1056. **DELIVERY TO GRANTEE IS NECESSARILY ABSOLUTE.** A grant cannot be delivered to the grantee conditionally. Delivery to him, or to his agent as such, is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made.

History: Enacted March 21, 1872.

§ 1057. **DELIVERY IN ESCROW.** A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in possession of the third person, and subject to condition, it is called an escrow.

History: Enacted March 21, 1872.

§ 1058. **SURRENDERING OR CANCELING GRANT DOES NOT RECONVEY.** Redelivering a grant of real property to the grantor, or canceling it, does not operate to retransfer the title.

History: Enacted March 21, 1872.

§ 1059. **CONSTRUCTIVE DELIVERY.** Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the par-

ties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

History: Enacted March 21, 1872.

§ 1060. **GRATUITOUS GRANTS TAKE EFFECT IMMEDIATELY; EXCEPTION** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 225.

ARTICLE IV.

INTERPRETATION OF GRANTS.

§ 1066. Grants, how interpreted.
§ 1067. Limitations, how controlled.
§ 1068. Recitals, when resorted to.
§ 1069. Interpretation against grantor.
§ 1070. Irreconcilable provisions.
§ 1071. Meaning of "heirs" and "issue," in certain remainders.
§ 1072. Words of inheritance unnecessary.

§ 1066. **GRANTS, HOW INTERPRETED.** Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this article.

History: Enacted March 21, 1872.

§ 1067. **LIMITATIONS, HOW CONTROLLED.** A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 395, held unconstitutional, see history, § 4 ante.

§ 1068.. RECITALS, WHEN RESORTED TO. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

History: Enacted March 21, 1872.

§ 1069. INTERPRETATION AGAINST GRANTOR. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

History: Enacted March 21, 1872.

§ 1070. IRRECONCILABLE PROVISIONS. If several parts of a grant are absolutely irreconcilable, the former part prevails.

History: Enacted March 21, 1872.

§ 1071. MEANING OF "HEIRS" AND "ISSUE" IN CERTAIN REMAINDERS. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

History: Enacted March 21, 1872, founded upon § 2, Act 1855, Stats. 1855, p. 171.

§ 1072. WORDS OF INHERITANCE UNNECESSARY. Words of inheritance or succession are not requisite to transfer a fee in real property.

History: Enacted March 21, 1872, founded upon § 3, Act 1855, Stats. 1855, p. 171.

ARTICLE V.

EFFECT OF TRANSFER.

§ 1083. What title passes.
§ 1084. Incidents.
§ 1085. Grant may inure to benefit of stranger.

§ 1083. WHAT TITLE PASSES. A transfer vests in the transferee all the actual title to the thing transferred which the transferrer then has, unless a different intention is expressed or is necessarily implied.

History: Enacted March 21, 1872.

§ 1084. INCIDENTS. The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

History: Enacted March 21, 1872.

§ 1085. GRANT MAY INURE TO BENEFIT OF STRANGER. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

History: Enacted March 21, 1872.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

Article I. Mode of Transfer, §§ 1091-1096.
II. Effect of Transfer, §§ 1104-1115.

ARTICLE I.

MODE OF TRANSFER.

§ 1091. Requisites for transfer of certain estates.
§ 1092. Form of grant.
§ 1093. Grant by married woman, how acknowledged.
§ 1094. Power of attorney of married woman, how acknowledged.
§ 1095. Attorney in fact, how must execute for principal.
§ 1096. Conveyance of real estate when name of person has been changed.

§ 1091. REQUISITES FOR TRANSFER OF CERTAIN ESTATES. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

History: Enacted March 21, 1872.

§ 1092. FORM OF GRANT. A grant of an estate in real property may be made in substance as follows:

"I, A B, grant to C D all that real property situated in (insert name of county) County, state of California, bounded (or described) as follows: (Here insert description, or if the land sought to be conveyed has a descriptive name, it

may be described by the name, as for instance, 'The Norris Ranch').

"Witness my hand this (insert day) day of (insert month), 18... "A. B."

History: Enacted March 21, 1872.

§ 1093. **GRANT BY MARRIED WOMAN, HOW ACKNOWLEDGED.** A grant or conveyance of real property made by a married woman may be made, executed, and acknowledged in the same manner and has the same effect as if she were unmarried.

History: Enacted March 21, 1872; amended March 14, 1895, Stats. and Amdts. 1895, p. 53.

§ 1094. **POWER OF ATTORNEY OF MARRIED WOMAN, HOW ACKNOWLEDGED.** A married woman may make, execute, and revoke powers of attorney for the sale, conveyance, or encumbrance of her real or personal estate, which shall have the same effect as if she were unmarried, and may be acknowledged in the same manner as a grant of real property.

History: Enacted March 21, 1872, founded upon § 1, Act April 3, 1863, Stats. 1863, p. 165; amended March 9, 1895, Stats. and Amdts. 1895, p. 39.

§ 1095. **ATTORNEY IN FACT, HOW MUST EXECUTE FOR PRINCIPAL.** When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

History: Enacted March 21, 1872.

§ 1096. **CONVEYANCE OF REAL ESTATE WHEN NAME OF PERSON HAS BEEN CHANGED.** Any person in whom the title of real estate is vested, who shall afterwards, from any cause, have his or her name changed, must,

in any conveyance of said real estate so held, set forth the name in which he or she derived title to said real estate.

History: Enacted, on recommendation of Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 396, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 602.

A codification of § 1, Act March 11, 1874, Stats. 1873-4, p. 345.

ARTICLE II.

EFFECT OF TRANSFER.

§ 1104. What easements pass with property.
§ 1105. When fee simple title is presumed to pass.
§ 1106. Subsequently acquired title passes by operation of law.
§ 1107. Grant, how far conclusive on purchaser.
§ 1108. Conveyances by owner for life or for years.
§ 1109. Grant made on condition subsequent.
§ 1110. Grants on condition, when absolute.
§ 1111. Grant of rents, reversions, and remainders.
§ 1112. Boundary by highway, what passes.
§ 1113. Implied covenants.
§ 1114. What the term "encumbrances" embraces.
§ 1115. Lineal and collateral warranties abolished.

§ 1104. WHAT EASEMENTS PASS WITH PROPERTY. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

History: Enacted March 21, 1872.

§ 1105. **WHEN FEE SIMPLE TITLE IS PRESUMED TO PASS.** A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

History: Enacted March 21, 1872.

§ 1106. **SUBSEQUENTLY ACQUIRED TITLE PASSES BY OPERATION OF LAW.** Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 396, held unconstitutional, see history, § 4 ante.

§ 1107. **GRANT, HOW FAR CONCLUSIVE ON PURCHASER.** Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

History: Enacted March 21, 1872.

§ 1108. **CONVEYANCES BY OWNER FOR LIFE OR FOR YEARS.** A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

History: Enacted March 21, 1872.

§ 1109. **GRANT MADE ON CONDITION SUBSEQUENT.** Where a grant is made upon condition subse-

quent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors, by grant, duly acknowledged for record.

History: Enacted March 21, 1872.

§ 1110. **GRANTS ON CONDITION, WHEN ABSOLUTE.** An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.

History: Enacted March 21, 1872; founded upon § 6, Act 1855, Code Amdts. 1873-4, p. 225.

§ 1111. **GRANT OF RENTS, REVERSIONS, AND REMAINDERS.** Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor, must suffer any damage thereby.

History: Enacted March 21, 1872; founded upon § 6, Act 1855, Stats. 1855, p. 171.

§ 1112. **BOUNDARY BY HIGHWAY, WHAT PASSES.** A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 225.

§ 1113. **IMPLIED COVENANTS.** From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for him-

self and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;

2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor, or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

History: Enacted March 21, 1872, founded upon § 9, Act 1855, Stats. 1855, p. 171.

§ 1114. **WHAT THE TERM "ENCUMBRANCES" EMBRACES.** The term "encumbrances" includes taxes, assessments, and all liens upon real property.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 226.

§ 1115. **LINEAL AND COLLATERAL WARRANTIES ABOLISHED.** Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

History: Enacted March 21, 1872, founded upon § 8, Act 1855 Stats. 1855, p. 171.

CHAPTER III.

TRANSFER OF PERSONAL PROPERTY.

Article I. Mode of Transfer, §§ 1135, 1136.
II. What Operates as a Transfer, §§ 1140-1142.
III. Gifts, §§ 1146-1153.

ARTICLE I.

MODE OF TRANSFER.

§ 1135. When must be in writing.
§ 1136. Transfer by sale, etc.

§ 1135. **WHEN MUST BE IN WRITING.** An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

History: Enacted March 21, 1872.

§ 1136. **TRANSFER BY SALE, ETC.** The mode of transferring other personal property by sale is regulated by the title on that subject, in division third of this code.

History: Enacted March 21, 1872.

ARTICLE II.

WHAT OPERATES AS A TRANSFER.

§ 1140. Transfer of title under sale.
§ 1141. Transfer of title under executory agreement for sale.
§ 1142. When buyer acquires better title than seller has.

§ 1140. TRANSFER OF TITLE UNDER SALE. The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not.

History: Enacted March 21, 1872.

§ 1141. TRANSFER OF TITLE UNDER EXECUTORY AGREEMENT FOR SALE. Title is transferred by an executory agreement for the sale or exchange of personal property only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the chapter upon offer of performance.

History: Enacted March 21, 1872.

§ 1142. WHEN BUYER ACQUIRES BETTER TITLE THAN SELLER HAS. Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter, while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind, and does rescind, the transfer made by him.

History: Enacted March 21, 1872.

ARTICLE III.

GIFTS.

§ 1146. Gifts defined.
§ 1147. Gift, how made.
§ 1148. Gift not revocable.
§ 1149. Gift in view of death, what.
§ 1150. When gift presumed to be in view of death.
§ 1151. Revocation of gift in view of death.
§ 1152. Effect of will upon gift.
§ 1153. When treated as legacy.

§ 1146. **GIFTS DEFINED.** A gift is a transfer of personal property, made voluntarily, and without consideration.

History: Enacted March 21, 1872.

§ 1147. **GIFT, HOW MADE.** A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

History: Enacted March 21, 1872.

§ 1148. **GIFT NOT REVOCABLE.** A gift, other than a gift in view of death, cannot be revoked by the giver.

History: Enacted March 21, 1872.

§ 1149. **GIFT IN VIEW OF DEATH, WHAT.** A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 396, held unconstitutional, see history, § 4 ante.

§ 1150. **WHEN GIFT PRESUMED TO BE IN VIEW OF DEATH.** A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

History: Enacted March 21, 1872.

§ 1151. **REVOCATION OF GIFT IN VIEW OF DEATH.** A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time, but when the gift has been delivered to the donee, the rights of a bona fide purchaser from the donee before the revocation, shall not be affected by the revocation.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 226.

§ 1152. **EFFECT OF WILL UPON GIFT.** A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

History: Enacted March 21, 1872.

§ 1153. **WHEN TREATED AS LEGACY.** A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver.

History: Enacted March 21, 1872.

CHAPTER IV.

RECORDING TRANSFERS.

Article I. What May Be Recorded, §§ 1158-1165.
II. Mode of Recording, §§ 1169-1173.
III. Proof and Acknowledgments of Instruments, §§ 1180-1207.
IV. Effect of Recording, or of the Want Thereof, §§ 1213-1218.

ARTICLE I.

WHAT MAY BE RECORDED.

§ 1158. What may be recorded.
§ 1159. Judgments may be recorded without acknowledgment. [Location of mining claim.]
§ 1160. Letters patent may be recorded without acknowledgment.
§ 1161. Instruments must be acknowledged, except, etc.
§ 1162. Same. [Certified instruments recorded, when.]
§ 1163. Certificate of residence filed with recorder, showing where service of summons may be made.
§ 1164. Transfer in trust, etc.
§ 1165. Recorder's fees to be indorsed.

§ 1158. WHAT MAY BE RECORDED. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

History: Enacted March 21, 1872.

§ 1159. JUDGMENTS MAY BE RECORDED WITHOUT ACKNOWLEDGMENT. [LOCATION OF MINING CLAIM.] Judgments affecting the title to or posses-

sion of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered (and notices of location of mining claims), may be recorded without acknowledgment, certificate of acknowledgment, or further proof.

[Work upon mining claims.] The record of all notices of location of mining claims heretofore made in the proper office without acknowledgment, or certificate of acknowledgment, or other proof, shall have the same force and effect for all purposes as if the same had been duly acknowledged, or proved and certified as required by law. Affidavits showing work or posting of notices upon mining claims may also be recorded in the recorder's office of the county where such mining claims are situated.

History: Enacted March 21, 1872; amended March 9, 1887, Stats. and Amdts. 1897, pp. 97, 98. **In effect** March 9, 1897.

§ 1160. LETTERS PATENT MAY BE RECORDED WITHOUT ACKNOWLEDGMENT. Letters patent from the United States, or from the state of California, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof, and where letters patent have been lost, or are beyond the control of any party deraigning title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have, prima facie, the same force and effect as the original, for title or for evidence, until said original letters patent be recorded.

History: Enacted March 21, 1872; amended April 1, 1878, Code Amdts. 1877-8, p. 86.

§ 1161. INSTRUMENTS MUST BE ACKNOWLEDGED, EXCEPT, ETC. Before an instrument can be recorded, unless it belongs to the class provided for in either section eleven hundred and fifty-nine, eleven hundred and sixty, twelve hundred and two, or twelve hundred and three, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or other person executing the same on behalf of the corporation, or proved by a subscribing witness, or as provided in sections eleven hundred and ninety-eight and eleven hundred and ninety-nine, and the acknowledgment or proof certified in the manner prescribed by article three of this chapter.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 226; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 396, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 602.

§ 1162. SAME. [CERTIFIED INSTRUMENTS RECORDED, WHEN.] An instrument proved and certified pursuant to sections eleven hundred and ninety-eight and eleven hundred and ninety-nine may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

History: Enacted March 21, 1872.

§ 1163. CERTIFICATE OF RESIDENCE FILED WITH RECORDER SHOWING WHERE SERVICE OF SUMMONS MAY BE MADE. Any person, firm, or corporation, may record in the office of the county recorder of any county in the state of California a certificate setting forth the name of said person, firm, or corporation, and the place of residence of said person, firm, or corporation, and the place where service of summons may be made upon said person, firm, or corporation. The said certificate must be

verified by the oath of the person, or of a member of the firm, or officer of the corporation making the same, and may be recorded without acknowledgment. Such person, firm or corporation may upon a change of place of residence file affidavit as herein provided and such last affidavit filed shall be the place designated as the place where service of summons may be made as herein provided.

The fee of the recorder for recording said certificate shall be fifty cents; and the recorder shall keep in his office an index entitled "Index to Certificates of Residence," in which must be entered the name of the person, firm, or corporation in whose behalf said certificate was filed.

History: Original section, providing that instruments enacted under power of attorney should not be recorded until the power of attorney was filed, was repealed March 30, 1873-4, p. 226. The above section is a new provision added, under old section number, March 18, 1905, Stats. and Amdts. 1905, pp. 139, 140.

§ 1164. **TRANSFER IN TRUST, ETC.** Transfers of property in trust for the benefit of creditors, and transfers or liens on property by way of mortgage, are required to be recorded in the cases specified in the titles on the special relation of debtor and creditor, and the chapter on mortgages, respectively.

History: Enacted March 21, 1872.

§ 1165. **RECORDER'S FEES TO BE INDORSED.** The recorder must, in all cases, indorse the amount of his fee for recordation on the instrument recorded.

History: Enacted March 11, 1874. Code Amdts. 1873-4, p. 275.

ARTICLE II.

MODE OF RECORDING.

§ 1169. In what office.
§ 1170. Instrument, when deemed recorded.
§ 1171. Books of record.
§ 1172. Duties of recorder.
§ 1173. Transfer of vessels.

§ 1169. **IN WHAT OFFICE.** Instruments entitled to be recorded must be recorded by the county recorder of the county in which the real property affected thereby is situated.

History: Enacted March 21, 1872.

§ 1170. **INSTRUMENT, WHEN DEEMED RECORDED.** An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the recorder's office, with the proper officer, for record.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 227.

§ 1171. **BOOKS OF RECORD.** Grants, absolute in terms, are to be recorded in one set of books, and mortgages in another.

History: Enacted March 21, 1872.

§ 1172. **DUTIES OF RECORDER.** The duties of county recorders, in respect to recording instruments, are prescribed by the Political Code.

History: Enacted March 21, 1872.

§ 1173. **TRANSFER OF VESSELS.** The mode of recording transfers of ships registered under the laws of the United States is regulated by acts of Congress.

History: Enacted March 21, 1872.

ARTICLE III.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

§ 1180. By whom acknowledgments may be taken in this state.
§ 1181. Same.
§ 1182. By whom taken without the state.
§ 1183. By whom taken without the United States.
§ 1184. Deputy can take acknowledgment.
§ 1185. Requisites for acknowledgments.
§ 1186. Acknowledgment by married women [repealed].
§ 1187. Conveyance by married woman. Acknowledgment.
§ 1188. [Same.] Certificate.
§ 1189. General form of certificate. [Outside of state.]
§ 1190. Form of acknowledgment by corporation.
§ 1191. Form of certificate of acknowledgment by married women [repealed].
§ 1192. Form of certificate of acknowledgment by attorney in fact.
§ 1193. Officers must affix their signatures.
§ 1194. Certificate of authority of justices in certain cases.
§ 1195. Proof of execution, how made.
§ 1196. Witness must be personally known to officer.
§ 1197. Witness must prove, what.
§ 1198. Handwriting may be proved, when.
§ 1199. Evidence of handwriting must prove, what.
§ 1200. Certificate of proof.
§ 1201. Officers authorized to do certain things.
§ 1202. Instrument improperly certified, how corrected.
§ 1203. Judgment proving instrument.
§ 1204. Effect of judgment in such action.
§ 1205. Conveyances heretofore made to be governed by then existing laws.
§ 1206. Recording, and as evidence, to be governed by then existing laws.
§ 1207. Validating defectively executed instruments. Record imparts notice. Certified copies.

§ 1180. BY WHOM ACKNOWLEDGMENTS MAY BE TAKEN IN THIS STATE. The proof or acknowledgment of an instrument may be made at any place within this state

before a justice or clerk of the superior court, or judge of a superior court.

History: Enacted March 21, 1872; amended April 3, 1880, Code Amdts. 1880 (C. C. pt.), p. 2.

§ 1181. SAME. The proof or acknowledgment of an instrument may be made in this state, within the city, county, city and county, township or district for which the officer was elected, or appointed, before either:

1. A clerk of a court of record;
2. A county recorder;
3. A court commissioner;
4. A notary public;
5. A justice of the peace.

History: Enacted March 21, 1872; amended April 3, 1880, Code Amdts. 1880 (C. C. pt.), p. 2; March 31, 1891, Stats. and Amdts. 1891, p. 214; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 396, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 603; March 21, 1911, Stats. and Amdts. 1911, p. 429.

§ 1182. BY WHOM TAKEN WITHOUT THE STATE. The proof or acknowledgment of an instrument may be made without this state, but within the United States, and within the jurisdiction of the officer, before either:

1. A justice, judge, or clerk of any court of record of the United States; or,
2. A justice, judge, or clerk of any court of record of any state; or,
3. A commissioner appointed by the governor of this state for that purpose; or,
4. A notary public; or,
5. Any other officer of the state where the acknowledgment is made authorized by its law to take such proof or acknowledgment.

History: Enacted March 21, 1872.

§ 1183. **BY WHOM TAKEN WITHOUT THE UNITED STATES.** The proof or acknowledgment of an instrument may be made without the United States, before either:

1. A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

2. A consul, vice-consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,

3. A judge of a court of record of the country where the proof or acknowledgment is made; or,

4. Commissioners appointed for such purposes by the governor of the state, pursuant to special statutes; or,

5. A notary public.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 227.

§ 1184. **DEPUTY CAN TAKE ACKNOWLEDGMENT.** When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

History: Enacted March 21, 1872.

§ 1185. **REQUISITES FOR ACKNOWLEDGMENTS.** The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 396, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 603.

§ 1186. **ACKNOWLEDGMENT BY MARRIED WOMEN** [repealed].

History: Enacted March 21, 1872; repealed March 19, 1891, Stats. and Amdts. 1891, p. 137.

§ 1187. **CONVEYANCE BY MARRIED WOMAN. ACKNOWLEDGMENT.** A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner.

History: Enacted March 21, 1872; amended March 19, 1891, Stats. and Amdts. 1891, p. 137.

§ 1188. **[SAME.] CERTIFICATE.** An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 227.

§ 1189. **GENERAL FORM OF CERTIFICATE. [OUTSIDE OF STATE.]** The certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form: "State of ....., County of ....., ss. On this ..... day of....., in the year ....., before me (here insert name and quality of the officer), personally appeared ....., known to me (or proved to me on the oath of .....) to be the person whose name is subscribed to the within instrument, and acknowledged that he (she or they) executed the same."

[Outside of state—Certificate of clerk of court.] Provided, however, that any acknowledgment taken without this

state in accordance with the laws of the place where the acknowledgment is made, shall be sufficient in this state; and provided further, that the certificate of the clerk of a court of record of the county or district where such acknowledgment is taken, that the officer certifying to the same is authorized by law so to do, and that the signature of the said officer to such certificate is his true and genuine signature, and that such acknowledgment is taken in accordance with the laws of the place where the same is made, shall be prima facie evidence of the facts stated in the certificate of said clerk.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 37; February 26, 1897, Stats. and Amdts. 1897, p. 43; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 397, held unconstitutional, see history, § 4 ante.

§ 1190. **FORM OF ACKNOWLEDGMENT BY CORPORATION.** The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

"State of..... } ss.
"County of..... }

"On this ..... day of ....., in the year ....., before me (here insert the name and quality of the officer), personally appeared ....., known to me (or proved to me on the oath of .....) to be the president (or the secretary) of the corporation that executed the within instrument (where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary) insert: known to me (or proved to me on the oath of .....) to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same."

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1900, Stats. and Amdts. 1900-1, p. 397, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 603.

§ 1191. FORM OF CERTIFICATE OF ACKNOWLEDGMENT BY MARRIED WOMAN [repealed].

History: Enacted March 21, 1872; repealed March 19, 1891, Stats. and Amdts. 1891, p. 137.

§ 1192. FORM OF CERTIFICATE OF ACKNOWLEDGMENT BY ATTORNEY IN FACT. The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

"State of.....
"County of..... } ss.

"On this .. .. day of ....., in the year ....., before me (here insert the name and quality of the officer) personally appeared ....., known to me (or proved to me on the oath of .....) to be the person whose name is subscribed to the within instrument as the attorney in fact of ....., and acknowledged to me that he subscribed the name of ..... thereto as principal, and his own name as attorney in fact."

History: Enacted March 21, 1872.

§ 1193. OFFICERS MUST AFFIX THEIR SIGNATURES. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 397, held unconstitutional, see history, § 4 ante.

§ 1194. **CERTIFICATE OF AUTHORITY OF JUSTICES IN CERTAIN CASES.** The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any country other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

History: Enacted March 21, 1872.

§ 1195. **PROOF OF EXECUTION, HOW MADE.** Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the party executing it, or either of them; or,
2. By a subscribing witness; or,
3. By other witnesses, in cases mentioned in section eleven hundred and ninety-eight.

History: Enacted March 21, 1872.

§ 1196. **WITNESS MUST BE PERSONALLY KNOWN TO OFFICER.** If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

History: Enacted March 21, 1872.

§ 1197. **WITNESS MUST PROVE, WHAT.** The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

History: Enacted March 21, 1872.

§ 1198. **HANDWRITING MAY BE PROVED, WHEN.** The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or,

2. When the parties and all the subscribing witnesses are non-residents of the state; or,

3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,

4. When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or,

5. In case of the continued failure or refusal of the witness to testify, for the space of one hour, after his appearance.

History: Enacted March 21, 1872.

§ 1199. **EVIDENCE OF HANDWRITING MUST PROVE, WHAT.** The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,

2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

4. The place of residence of the witness.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 227, 228.

§ 1200. **CERTIFICATE OF PROOF.** An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

History: Enacted March 21, 1872.

§ 1201. **OFFICERS AUTHORIZED TO DO CERTAIN THINGS.** Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations, as prescribed in section two thousand and ninety-three, Code of Civil Procedure;

2. To employ and swear interpreters;

3. To issue subpoena, as prescribed in section nineteen hundred and eighty-six, Code of Civil Procedure;

4. To punish for contempt, as prescribed in sections nineteen hundred and ninety-one, nineteen hundred and ninety-three, nineteen hundred and ninety-four, Code of Civil Procedure.

The civil damages and forfeiture to the party aggrieved are prescribed in section nineteen hundred and ninety-two, Code of Civil Procedure.

History: Enacted March 21, 1872.

§ 1202. **INSTRUMENT IMPROPERLY CERTIFIED, HOW CORRECTED.** When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action

in the superior court to obtain a judgment correcting the certificate.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 397, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 604.

§ 1203. JUDGMENT PROVING INSTRUMENT. Any person interested under an instrument entitled to be proved for record, may institute an action in the superior court against the proper parties to obtain a judgment proving such instrument.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 398, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 604.

§ 1204. EFFECT OF JUDGMENT IN SUCH ACTION. A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to record, with like effect as if acknowledged.

History: Enacted March 21, 1872.

§ 1205. CONVEYANCE HERETOFORE MADE TO BE GOVERNED BY THEN EXISTING LAWS. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this code goes into effect, executed, acknowledged, proved, or recorded is not affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed.

History: Enacted March 21, 1872.

§ 1206. **RECORDING, AND AS EVIDENCE, TO BE GOVERNED BY THEN EXISTING LAWS.** All conveyances of real property made before this code goes into effect, and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with the like effect, as conveyances executed and acknowledged in pursuance of this chapter.

History: Enacted March 21, 1872.

§ 1207. **VALIDATING DEFECTIVELY EXECUTED INSTRUMENTS. RECORD IMPARTS NOTICE. CERTIFIED COPIES.** Any instrument affecting the title to real property, including any instrument executed by a married woman on or after the first day of July, 1891, which was, previous to the first day of January, one thousand nine hundred and fifteen, copied into the proper book of record, kept in the office of any county recorder, imparts, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein affects the rights of purchasers or encumbrancers previous to the taking effect of this act. Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded; provided, when such copying in the proper book of record occurred within fifteen years prior to the trial of the action, it is shown first that the original instrument was genuine.

History: Enacted March 31, 1874, Code Amdts. 1873-4, p. 228, amended March 4, 1897, Stats. and Amdts. 1897, p. 641; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 398, Act held unconstitutional, see history, § 4 ante; amended reenacted March 9, 1903, Stats. and Amdts. 1903, p. 108; amended February 22, 1909, Stats. and Amdts. 1909, p. 45; April 22, 1913, Stats. and Amdts. 1913, p. 75; June 5, 1915, Stats. and Amdts. 1915, p. 1211. **In effect** August 8, 1915.

ARTICLE IV.

EFFECT OF RECORDING, OR THE WANT THEREOF.

[**Commissioners' Note.**—"The provisions of the various statutes concerning conveyances, which relate to the effect as evidence of instruments acknowledged or recorded, have been placed and may be found in the fourth part of the Code of Civil Procedure."]

§ 1213. Conveyance filed with recorder is constructive notice, etc.
§ 1214. Conveyances to be recorded, or are void, etc.
§ 1215. Conveyance defined.
§ 1216. Powers of attorney, how revoked.
§ 1217. Unrecorded instrument valid between the parties.
§ 1218. Recording certified copies of recorded instruments.

§ 1213. CONVEYANCE FILED WITH RECORDER IS CONSTRUCTIVE NOTICE, ETC. Every conveyance of real property acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgagees: and a certified copy of any such recorded conveyance may be recorded in any other county and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance and where such original conveyance has been recorded in any county wherein the property therein mentioned is not situated a certified copy of such recorded conveyance may be recorded in the county where such property is situated with the same force and effect as if the original conveyance had been recorded in such county.

History: Enacted March 21, 1872; amended March 3, 1897, Stats. and Amdts. 1897, p. 59; March 10, 1909, Stats. and Amdts. 1909, p. 278.

§ 1214. CONVEYANCES TO BE RECORDED, OR ARE VOID, ETC. Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless such conveyance shall have been duly recorded prior to the record of notice of action.

History: Enacted March 21, 1872; amended March 12, 1895, Stats. and Amdts. 1895, p. 50.

§ 1215. CONVEYANCE DEFINED. The term "conveyance," as used in sections twelve hundred and thirteen and twelve hundred and fourteen, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to any real property may be affected, except wills.

History: Enacted March 21, 1872.

§ 1216. POWERS OF ATTORNEY, HOW REVOKED. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded, in the same office in which the instrument containing the power was recorded.

History: Enacted March 21, 1872.

§ 1217. UNRECORDED INSTRUMENT VALID BETWEEN THE PARTIES. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

History: Enacted March 21, 1872.

§ 1218. RECORDING CERTIFIED COPIES OF RECORDED INSTRUMENTS. A certified copy of an instrument affecting the title to real property, once recorded, or a certified copy of the record of such instrument may be recorded in any other county, and, when so recorded, the record thereof has the same force and effect as though it was of the original instrument.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 604; amended May 30, 1913, Stats. and Amdts. 1913, p. 335. **In effect** August 10, 1913.

CHAPTER V.

UNLAWFUL TRANSFERS.

§ 1227. Certain instruments void against purchasers, etc.
§ 1228. Not void against purchaser having notice, unless fraud is mutual.
§ 1229. Power to revoke, when deemed executed.
§ 1230. Same. [Deemed executed when entitled to execute.]
§ 1231. Other provisions.

§ 1227. CERTAIN INSTRUMENTS VOID AGAINST PURCHASERS, ETC. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or encumbrancers thereon, is void as against every purchaser or encumbrancer, for value, of the same property, or the rents or profits thereof.

History: Enacted March 21, 1872.

§ 1228. NOT VOID AGAINST PURCHASER HAVING NOTICE, UNLESS FRAUD IS MUTUAL. No instrument is to be avoided under the last section, in favor of a sub-

sequent purchaser or encumbrancer having notice thereof at the time his purchase was made, or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended.

History: Enacted March 21, 1872, founded upon § 2, Act April 19, 1850, Stats. 1850, p. 266.

§ 1229. **POWER TO REVOKE, WHEN DEEMED EXECUTED.** Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estate, by the person having the power of revocation, in favor of a purchaser or encumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or encumbrancer.

History: Enacted March 21, 1872, founded upon § 4 Act April 19, 1850, Stats. 1850, p. 266.

§ 1230. **SAME. [DEEMED EXECUTED WHEN ENTITLED TO EXECUTE.]** Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

History: Enacted March 21, 1872, founded upon § 6, Act April 19, 1850, Stats. 1850, p. 267.

§1231. **OTHER PROVISIONS.** Other provisions concerning unlawful transfers are contained in part two, division fourth, of this code, concerning the special relations of debtor and creditor.

History: Enacted March 21, 1872.

TITLE V.

HOMESTEADS.

Chapter I. General Provisions, §§ 1237-1261.
II. Homestead of the Head of a Family, §§ 1262-1265.
III. Homestead of Other Persons, §§ 1266-1269c.

CHAPTER I.

GENERAL PROVISIONS.

§ 1237. Homestead, of what it consists.
§ 1238. From what may be selected.
§ 1239. From what not.
§ 1240. Exempt from forced sale.
§ 1241. Sale on execution, when.
§ 1242. How conveyed or encumbered.
§ 1243. How abandoned.
§ 1244. Same. [Effectual from when.]
§ 1245. Proceedings on execution against homestead.
§ 1246. Same. [Application, how made.]
§ 1247. Same. [Petition, where filed,]
§ 1248. Same. [Notice of hearing, service.]
§ 1249. Same. [Appointing appraisers.]
§ 1250. Same. [Appraisers to be sworn.]
§ 1251. Same. [Determining value and divisibility.]
§ 1252. Same. [Report of appraisers, contents.]
§ 1253. Same. [Setting off homestead exemption.]
§ 1254. Same. [Order directing sale, when.]
§ 1255. Same. [What bid may be received.]
§ 1256. Same. [Application of proceeds of sale.]
§ 1257. After sale, money equal to homestead exemption protected.
§ 1258. Compensation of appraisers.
§ 1259. Costs. [How paid and collected.]
§ 1260. Who may select homestead, value of.
§ 1261. Head of a family defined.

§ 1237. HOMESTEAD, OF WHAT IT CONSISTS. The homestead consists of the dwelling-house in which the claimant resides, and the land on which the same is situated, selected as in this title provided.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 228; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 398, held unconstitutional, see history, § 4 ante.

§ 1238. FROM WHAT MAY BE SELECTED. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, within the meaning of section one thousand two hundred and sixty-one, the homestead may be selected from any of his or her property.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 229.

§ 1239. FROM WHAT NOT. The homestead cannot be selected from the separate property of the wife, without her consent, shown by her making or joining in making the declaration of homestead.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 229.

§ 1240. EXEMPT FROM FORCED SALE. The homestead is exempt from execution or forced sale, except as in this title provided.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 399, held unconstitutional, see history, § 4 ante.

§ 1241. **SALE ON EXECUTION, WHEN.** The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises.

2. On debts secured by mechanics, contractors, subcontractors, artisans, architects, builders, laborers of every class, materialmen's or vendors' liens upon the premises.

3. On debts secured by mortgages on the premises, executed and acknowledged by husband and wife, or by an unmarried claimant.

4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 229; April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 7; March 9, 1887, Stats. and Amdts. 1887. p. 81. **In force** March 9, 1887.

§ 1242. **HOW CONVEYED OR ENCUMBERED.** The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.

History: Enacted March 21, 1872.

§ 1243. **HOW ABANDONED.** A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged:

1. By the husband and wife, if the claimant is married;

2. By the claimant, if unmarried.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 399, held unconstitutional, see history, § 4 ante.

§ 1244. SAME. [EFFECTUAL FROM WHEN.] A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

History: Enacted March 21, 1872.

§ 1245. PROCEEDINGS ON EXECUTION AGAINST HOMESTEAD. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section one thousand two hundred and forty-one is levied upon the homestead, the judgment creditor may at any time within sixty days thereafter apply to the superior court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof, and if such application shall not be made within sixty days after the levy of such execution the lien of the execution shall cease at the expiration of said period, and no execution based upon the same judgment shall thereafter be levied upon the homestead.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 228; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 398, held unconstitutional, see Kerr's Cyc. C. C. § 4; April 12, 1911, Stats. and Amdts. 1911, p. 888.

§ 1246. SAME. [APPLICATION, HOW MADE.] The application must be made upon a verified petition of the judgment creditor showing:

1. The fact that an execution has been levied upon the homestead within sixty days prior to the filing of said petition.

2. A description of the homestead and the name of the claimant.

3. That the value of the homestead exceeds the amount of the homestead exemption.

4. That no previous execution arising out of the same judgment has been levied upon said homestead.

History: Enacted March 21, 1872; amended April 12, 1911, Stats. and Amdts. 1911, p. 888.

§ 1247. SAME. [PETITION, WHERE FILED.] The petition must be filed with the clerk of the superior court.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 8; amended by Code Commission. Act March 16, 1901, Stats. and Amdts. 1900-1, p. 399, held unconstitutional, see history, § 4 ante.

§ 1248. SAME. [NOTICE OF HEARING, SERVICE.] Within ninety days from the date of filing the petition, a copy thereof, with the notice of the time and place of hearing, must be served upon the claimant or his attorneys at least two days before the hearing; and if such notice shall not be so served, the lien of the execution shall cease at the expiration of said period of ninety days, and no execution based upon the same judgment shall thereafter be levied upon the homestead.

History: Enacted March 21, 1872; amended by Code Commission. Act March 16, 1901, Stats. and Amdts. 1900-1, p. 399, held unconstitutional, see Kerr's Cyc. C. C. § 4; amended April 12 ,1911, Stats. and Amdts. 1911, p. 889.

§ 1249. SAME. [APPOINTING APPRAISERS.] At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 400, held unconstitutional, see history, § 4 ante.

§ 1250. SAME. [APPRAISERS TO BE SWORN.] The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

History: Enacted March 21, 1872.

§ 1251. SAME. [DETERMINING VALUE AND DIVISIBILITY.] They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption they must determine whether the land claimed can be divided without material injury.

History: Enacted March 21, 1872.

§ 1252. SAME. [REPORT OF APPRAISERS, CONTENTS.] Within fifteen days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 400, held unconstitutional, see history, § 4 ante.

§ 1253. SAME. [SETTING OFF HOMESTEAD EXEMPTION.] If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 400, held unconstitutional, see history, § 4 ante.

§ 1254. SAME. [ORDER DIRECTING SALE, WHEN.] If, from the report, it appears to the judge that the land claimed exceeds in value the amount of the homestead ex-

emption, and that it cannot be divided, he must make an order directing its sale under the execution.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 400, held unconstitutional, see history, § 4 ante.

§ 1255. SAME. [WHAT BID MAY BE RECEIVED.] At such sale no bid must be received, unless it exceeds the amount of the homestead exemption.

History: Enacted March 21, 1872.

§ 1256. SAME. [APPLICATION OF PROCEEDS OF SALE.] If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 400, held unconstitutional, see history, § 4 ante.

§ 1257. AFTER SALE, MONEY EQUAL TO HOMESTEAD EXEMPTION PROTECTED. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts., 1873-4, p. 230.

§ 1258. COMPENSATION OF APPRAISERS. The court must fix the compensation of the appraisers, not to exceed five dollars per day each for the time actually engaged.

History: Enacted March 21, 1872.

§ 1259. COSTS. [HOW PAID AND COLLECTED.] The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in sections twelve hundred and fifty-three and twelve hundred and fifty-four the amount so paid must be added as costs on execution, and collected accordingly.

History: Enacted March 21, 1872.

§ 1260. WHO MAY SELECT HOMESTEAD, VALUE OF. Homestead may be selected and claimed:

1. Of not exceeding five thousand dollars in value by any head of a family;

2. Of not exceeding one thousand dollars in value by any other person.

History: Enacted March 21, 1872.

§ 1261. HEAD OF A FAMILY DEFINED. The phrase "head of a family," as used in this title, includes within its meaning:

1. The husband, when the claimant is a married person.

2. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either: (1) His or her minor child, or minor grandchild, or the minor child of his or her deceased wife or husband; (2) a minor brother or sister, or the minor child of a deceased brother or sister.

3. A father, mother, grandfather, or grandmother.

4. The father, mother, grandfather, or grandmother of a deceased husband or wife.

5. An unmarried sister, or any other of the relatives mentioned in this section, who have attained the age of majority, and are unable to take care of or support themselves.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 230; March 9, 1893, Stats. and Amdts. 1893, pp. 123, 124. **In force** March 9, 1893.

CHAPTER II.

HOMESTEAD OF THE HEAD OF A FAMILY.

§ 1262. Mode of selection.
§ 1263. Declaration of homestead. [Must contain what.]
§ 1264. Declaration must be recorded.
§ 1265. Tenure by which homestead is held.

§ 1262. MODE OF SELECTION. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 230.

§ 1263. DECLARATION OF HOMESTEAD. [MUST CONTAIN WHAT.] The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family, and, if the claimant is married, the name of the spouse; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises, and claims them as a homestead;

3. A description of the premises;

4. An estimate of their actual cash value.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 231; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 400, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 400.

§ 1264. DECLARATION MUST BE RECORDED. The declaration must be recorded in the office of the recorder of the county in which the land is situated.

History: Enacted March 21, 1872.

§ 1265. TENURE BY WHICH HOMESTEAD IS HELD. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, or from the separate property of the spouse making the selection or joining therein, the land so selected, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to the heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it, or the products, rents, issues or profits thereof be held liable for the debts of the owner, except as provided in this title; and should the homestead be sold by the owner, the proceeds arising from such sale to the extent of the value allowed for a homestead exemption as provided in this title shall be exempt to the owner of the homestead for a period of six months next following such sale.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 231; April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 8; April 16, 1909, Stats. and Amdts. 1909, p. 972; February 15, 1911, Stats. and Amdts. 1911, p. 61.

CHAPTER III.

HOMESTEAD OF OTHER PERSONS.

§ 1266. Mode of selection.
§ 1267. Declaration of homestead.
§ 1268. Declaration must be recorded.
§ 1269. Effect of filing for record the declaration of homestead.

§ 1266. MODE OF SELECTION. Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a "declaration of homestead."

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 400, held unconstitutional, see history, § 4 ante.

§ 1267. DECLARATION OF HOMESTEAD. The declaration must contain everything required by the second, third, and fourth subdivisions of section twelve hundred and sixty-three.

History: Enacted March 21, 1872.

§ 1268. DECLARATION MUST BE RECORDED. The declaration must be recorded in the office of the county recorder of the county in which the land is situated.

History: Enacted March 21, 1872.

§ 1269. EFFECT OF FILING FOR RECORD THE DECLARATION OF HOMESTEAD. From and after the time the declaration is filed for record, the land described therein is a homestead.

History: Enacted March 21, 1872.

CHAPTER IV.

ALIENATION OF HOMESTEADS OF INSANE PERSONS.

§ 1269a. Petition for sale or mortgage of homestead where husband or wife insane.
§ 1269b. Notice of application for order.
§ 1296c. When order may be made and effect of order.

§ 1269a. PETITION FOR SALE OR MORTGAGE OF HOMESTEAD WHERE HUSBAND OR WIFE INSANE. In case of a homestead, if either the husband or wife becomes hopelessly insane, the husband or wife not insane may petition the superior court of the county in which such homestead is situated for an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead to raise moneys to satisfy a lien or charge thereon, or to provide for the support and care either of the sane or insane spouse, or of their minor children. Such petition must be subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the number, age, and sex of the children, if any, of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts, in addition to that of the insanity of the husband or wife, relating to the circumstances and necessities of the applicant and his or her family, as he or she may rely upon in support of the petition.

History: Enacted March 22, 1905, Stats. and Amdts. 1905, p. 725.

A codification of §§ 1 and 3, Act March 25, 1874, Stats. 1873-4, pp. 582, 583.

§ 1269b. **NOTICE OF APPLICATION FOR ORDER.** Notice of the application for such order must be given by publication of the same, in a newspaper published in the county in which such homestead is situated, if there is a newspaper published therein, once each week for three successive weeks, prior to the hearing of such application, and a copy of such notice must also be personally served upon the nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application; and in case there is no such male relative known to the applicant, a copy of such notice must be so served upon the public administrator of the county in which such homestead is situated; and in such case it is the duty of such public administrator to appear and represent the interests of such insane person. For all such services rendered by the public administrator he must be allowed a reasonable fee, to be fixed by the court, and the same must be taxed as costs against the person making application for the order herein provided for.

History: Enacted March 22, 1905, Stats. and Amdts. 1905, p. 726.

A codification of § 2, Act March 25, 1874, Stats. 1873-4, pp. 582, 583.

§ 1269c. **WHEN ORDER MAY BE MADE AND EFFECT OF ORDER.** If it appears to the court that such husband or wife is hopelessly insane, the court may make an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead, and thereafter any sale, conveyance, or mortgage made in pursuance of such order is as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage. If a sale is ordered it must be reported to and confirmed by the court. Such husband or wife must, before executing any mortgage or conveyance,

give a bond, to be approved by the judge of the court, in double the amount of the mortgage, or double the value of the property to be sold, conditioned to account for the proceeds of the mortgage or sale and to apply such proceeds only as the court may direct.

History: Enacted March 22, 1905, Stats. and Amdts. 1905, p. 726.

A codification of § 4, Act March 25, 1874, Stats. 1873-4, p. 583.

TITLE VI.

WILLS.

Chapter I. Execution and Revocation of Wills, §§ 1270-1313.
II. Interpretation of Wills, §§ 1317-1351.
III. General Provisions Relating to Wills, §§ 1357-1377.

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

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§ 1270. **WHO MAY MAKE A WILL.** Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in title seven of this part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the Code of Civil Procedure.

History: Enacted March 21, 1872, founded upon § 1, Act April 10, 1850, Stats. 1850, p. 177.

§ 1271. **MONOMANIAC INCOMPETENT** [repealed.]

History: Enacted March 21, 1872, repealed March 30, 1874, Code Amdts. 1873-4, p. 232.

§ 1272. **WILL, OR PART THEREOF, PROCURED BY FRAUD.** A will, or part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

History: Enacted March 21, 1872.

§ 1273. **WILL OF MARRIED WOMAN.** A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

History: Enacted March 21, 1872, founded upon § 2 Act April 10, 1850, Stats. 1850, p. 177; amended March 30, 1874, Code Amdts. 1873-4, p. 232.

§ 1274. **WHAT MAY PASS BY WILL.** Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will, except as otherwise provided in sections fourteen hundred and one and fourteen hundred and two.

History: Enacted March 21, 1872.

§ 1275. **WHO MAY TAKE BY WILL.** A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that corporations other than counties, municipal corporations, and corporations formed for scientific, literary, or solely educational or hospital purposes, cannot take under a will, unless expressly authorized by statute; subject, however, to the provisions of section thirteen hundred and thirteen.

History: Enacted March 21, 1872; amended March 29, 1874, Code Amdts. 1873-4, p. 275; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 402, held unconstitutional, see history, § 4 ante; amendment substantially re-enacted

March 20, 1903, Stats. and Amdts. 1903, p. 258, merely omitting the words "counties, municipal corporations," and this amendment of the Code Commission restored, by inserting the omitted words, March 21, 1905, Stats. and Amdts. 1905, p. 605.

§ 1276. **WRITTEN WILL, HOW TO BE EXECUTED.** Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic [holographic] will, and a nuncupative will, must be executed and attested as follows:

1. **It must be subscribed at the end** thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;

2. **The subscription must be made in the presence of the attesting witnesses,** or be acknowledged by the testator to them to have been made by him or by his authority;

3. **The testator must, at the time of subscribing or acknowledging** the same, declare to the attesting witnesses that the instrument is his will; and,

4. **There must be two attesting witnesses,** each of whom must sign the same as a witness, at the end of the will, at the testator's request and in his presence.

History: Enacted March 21, 1872, founded upon § 3 Act April 10, 1850, Stats. 1850, p. 177; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 402, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 605.

§ 1277. **DEFINITION OF AN [H]OLOGRAPHIC WILL.** An [h]olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed.

History: Enacted March 21, 1872.

§ 1278. WITNESS TO ADD RESIDENCE. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

History: Enacted March 21, 1872.

§ 1279. MUTUAL WILL. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

History: Enacted March 21, 1872.

§ 1280. COMPETENCY OF SUBSCRIBING WITNESS. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

History: Enacted March 21, 1872, founded upon § 4 Act April 10, 1850, Stats. 1850, p. 177.

§ 1281. CONDITIONAL WILL. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

History: Enacted March 21, 1872.

§ 1282. GIFTS TO SUBSCRIBING WITNESSES VOID. CREDITOR COMPETENT WITNESS. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but

a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

History: Enacted March 21, 1872, founded upon § 5 Act April 10, 1850, Stats. 1850, p. 177.

§ 1283. **WITNESS WHO IS A DEVISEE, ENTITLED TO SHARE TO AMOUNT OF DEVISE, WHEN.** If a witness, to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

History: Enacted March 21, 1872, founded upon § 6 Act April 10, 1850, Stats. 1850, p. 177; amended March 30, 1874, Code Amdts. 1873-4, p. 232.

§ 1284. **WILL MADE OUT OF THIS STATE** [repealed].

History: Enacted March 21, 1872, founded upon § 23 Act April 10, 1850, Stats. 1850, p. 179; repealed March 30, 1874, Code Amdts. 1873-4, p. 232.

§ 1285. **WILL MADE OUT OF STATE NOT VALID, UNLESS.** No will made out of this state is valid as a will in this state, unless executed according to the provisions of this chapter, except that a will made in a state or country in which the testator is domiciled at the time of his death, and valid as a will under the laws of such state or country, is valid in this state so far as the same relates to personal prop-

erty, subject, however, to the provisions of section thirteen hundred and thirteen.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 232; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 402, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 606.

§ 1286. SUBSEQUENT CHANGE OF DOMICILE [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 232.

§ 1287. REPUBLICATION BY CODICIL. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

History: Enacted March 21, 1872.

§ 1288. NUNCUPATIVE WILL, HOW TO BE EXECUTED. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

History: Enacted March 21, 1872.

§ 1289. REQUISITES OF A VALID NUNCUPATIVE WILL. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect.

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea,

and in either case in actual contemplation, fear, or peril of death, or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day.

History: Enacted March 21, 1872. founded upon § 7 Act April 10, 1850, Stats. 1850, p. 177; amended March 30, 1874, Code Amdts. 1873-4, p. 233.

§ 1290. **PROOF OF NUNCUPATIVE WILLS.** No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

History: Enacted March 21, 1872, founded upon § 8 Act April 10, 1850, Stats. 1850, p. 178.

§ 1291. **PROBATE OF NUNCUPATIVE WILLS.** No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper.

History: Enacted March 21, 1872, founded upon § 9 Act April 10, 1850, Stats. 1850, p. 178.

§ 1292. **WRITTEN WILL, HOW REVOKED.** Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

1. **By a written will, or other writing of the testator,** declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

History: Enacted March 21, 1872.

§ 1293. EVIDENCE OF REVOCATION. When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction, must be proved by two witnesses.

History: Enacted March 21, 1872, founded upon § 10 Act April 10, 1850, Stats. 1850, p. 178.

§ 1294. REVOCATION BY OBLITERATION ON FACE OF WILL [repealed].

History: Enacted March 21, 1872, repealed March 30, 1874, Code Amdts. 1873-4, p. 233.

§ 1295. REVOCATION OF DUPLICATE. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

History: Enacted March 21, 1872.

§ 1296. REVOCATION BY SUBSEQUENT WILL. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

History: Enacted March 21, 1872.

§ 1297. ANTECEDENT NOT REVIVED BY REVOCATION OF SUBSEQUENT WILL. If, after making a will, the testator duly makes and executes a second will, the de-

struction, cancelation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancelation, or revocation, the first will is duly republished.

History: Enacted March 21, 1872, founded upon § 11 Act April 10, 1850, Stats. 1850, p. 178.

§ 1298. **REVOCATION BY MARRIAGE AND BIRTH OF ISSUE.** If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

History: Enacted March 21, 1872.

§ 1299. **EFFECT OF MARRIAGE OF A MAN ON HIS WILL.** If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

History: Enacted March 21, 1872, founded upon § 12 Act April 10, 1850, Stats. 1850, p. 178.

§ 1300. **EFFECT OF A MARRIAGE OF A WOMAN ON HER WILL.** A will, executed by a woman, is revoked by her subsequent marriage, and is not revived by the death of her husband.

History: Enacted March 21, 1872, founded upon § 13 Act April 10, 1850, Stats. 1850, p. 178; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 402, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 606.

§ 1301. **CONTRACT OF SALE NOT A REVOCATION.** An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

History: Enacted March 21, 1872, founded upon § 14 Act April 10, 1850, Stats. 1850, p. 178.

§ 1302. **MORTGAGE NOT A REVOCATION OF WILL.** A charge or encumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or encumbrance.

History: Enacted March 21, 1872, founded upon § 15 Act April 10, 1850, Stats. 1850, p. 178.

§ 1303. **CONVEYANCE, WHEN NOT A REVOCATION.** A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly devested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

History: Enacted March 21, 1872.

§ 1304. **[SAME.] WHEN IT IS A REVOCATION.** If the instrument by which an alteration is made in the testa-

tor's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

History: Enacted March 21, 1872.

§ 1305. **REVOCATION OF CODICILS.** The revocation of a will revokes all its codicils.

History: Enacted March 21, 1872.

§ 1306. **AFTER-BORN CHILD, UNPROVIDED FOR, TO SUCCEED.** Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate. But such succession does not impair or affect the validity of any sale of property made by authority of such will in accordance with the provisions of section fifteen hundred and sixty-one of the Code of Civil Procedure.

History: Enacted March 21, 1872, founded upon § 16 Act April 10, 1850, Stats. 1850, p. 178; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 402, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 606.

§ 1307. **CHILDREN OR ISSUE OF CHILDREN OF TESTATOR UNPROVIDED FOR BY HIS WILL [TO SUCCEED].** When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, has the same share in

the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section. But such succession does not impair or affect the validity of any sale of property made by authority of such will in accordance with the provisions of section fifteen hundred and sixty-one of the Code of Civil Procedure.

History: Enacted March 21, 1872, founded upon § 17 Act April 10, 1850, Stats. 1850, p. 178; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 403, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 606.

§ 1308. **SHARE OF AFTER-BORN CHILD, OUT OF WHAT PART OF ESTATE TO BE PAID.** When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision, may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

History: Enacted March 21, 1872, founded upon § 18 Act April 10, 1850, Stats. 1850, p. 178.

§ 1309. **ADVANCEMENT DURING LIFETIME OF TESTATOR.** If such children, or their descendants, so provided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

History: Enacted March 21, 1872, founded upon § 19 Act April 10, 1850, Stats. 1850, p. 179.

§ 1310. ON DEATH OF DEVISEE, BEING RELATION OF TESTATOR, IN LIFETIME OF TESTATOR, LEAVING LINEAL DESCENDANTS [THEY SUCCEED]. When any estate is devised or bequeathed to any child, or other relation of the testator, and the devisee or legatee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee or legatee would have done had he survived the testator.

History: Enacted March 21, 1872, founded upon § 20 Act April 10, 1850, Stats. 1850, p. 179; amended March 18, 1905, Stats. and Amdts. 1905, p. 150.

§ 1311. DEVISES OF LAND, HOW CONSTRUED. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

History: Enacted March 21, 1872, founded upon § 21 Act April 10, 1850, Stats. 1850, p. 179.

§ 1312. WILLS PASS ESTATE SUBSEQUENTLY ACQUIRED. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms, devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

History: Enacted March 21, 1872, founded upon § 22 Act April 10, 1850, Stats. 1850, p 179; amended March 30, 1874, Code Amdts. 1873-4, p. 233.

§ 1313. **CHARITABLE, ETC., BEQUESTS. LIMITATION AS TO TIME AND AMOUNT.** No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death such devise or legacy and each of them shall be valid; provided, that no such devises or bequests shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law.

History: Enacted March 18, 1874, Code Amdts. 1873-4, p. 276. **In force** March 18, 1874.

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

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§ 1317. **TESTATOR'S INTENTION TO BE CARRIED OUT.** A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

History: Enacted March 21, 1872.

§ 1318. **INTENTION TO BE ASCERTAINED FROM THE WILL.** In case of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

History: Enacted March 21, 1872.

§ 1319. **RULES OF INTERPRETATION.** In interpreting a will, subject to the law of this state, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

History: Enacted March 21, 1872.

§ 1320. **SEVERAL INSTRUMENTS ARE TO BE TAKEN TOGETHER.** Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

History: Enacted March 21, 1872.

§ 1321. **HARMONIZING VARIOUS PARTS.** All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the latter must prevail.

History: Enacted March 21, 1872.

§ 1322. **IN WHAT CASE DEVISE NOT AFFECTED.** A clear and distinct devise or bequest cannot be affected by

any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

History: Enacted March 21, 1872.

§ 1323. **WHEN AMBIGUOUS OR DOUBTFUL.** Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

History: Enacted March 21, 1872.

§ 1324. **WORDS TAKEN IN ORDINARY SENSE.** The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

History: Enacted March 21, 1872.

§ 1325. **WORDS TO RECEIVE AN OPERATIVE CONSTRUCTION.** The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

History: Enacted March 21, 1872.

§ 1326. **INTESTACY TO BE AVOIDED.** Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 403, held unconstitutional, see history, § 4 ante.

§ 1327. **EFFECT OF TECHNICAL WORDS.** Technical words in a will are to be taken in their technical sense, unless

the context clearly indicates a contrary intention, or unless it satisfactorily appears that the will was drawn solely by the testator, and that he was unacquainted with such technical sense.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 403, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 606.

§ 1328. TECHNICAL WORDS NOT NECESSARY. Technical words are not necessary to give effect to any species of disposition by a will.

History: Enacted March 21, 1872.

§ 1329. CERTAIN WORDS NOT NECESSARY TO PASS A FEE. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

History: Enacted March 21, 1872.

§ 1330. POWER TO DEVISE, HOW EXECUTED BY TERMS OF WILL. Real or personal property embraced in a power to devise, passes by a will purporting to devise all the real or personal property of the testator.

History: Enacted March 21, 1872.

§ 1331. DEVISE OR BEQUEST OF ALL REAL OR ALL PERSONAL PROPERTY, OR BOTH. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

History: Enacted March 21, 1872.

§ 1332. **RESIDUARY CLAUSES.** A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 234.

§ 1333. **SAME. [BEQUEST OF RESIDUE, EFFECT.]** A bequest of the residue of the testator's personal property, passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 234.

§ 1334. **"HEIRS," "RELATIVES," "ISSUE," "DESCENDANTS," ETC.** A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest" or "next of kin," of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of the title on succession, in this code.

History: Enacted March 21, 1872.

§ 1335. **WORDS OF DONATION AND OF LIMITATION.** The terms mentioned in the last section are used as words of donation, and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

History: Enacted March 21, 1872.

§ 1336. **TO WHAT TIME WORDS REFER.** Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

History: Enacted March 21, 1872.

§ 1337. **DEVISE OR BEQUEST TO A CLASS.** A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possesion is postponed.

History: Enacted March 21, 1872.

§ 1338. **WHEN CONVERSION TAKES EFFECT.** When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

History: Enacted March 21, 1872.

§ 1339. **WHEN CHILD BORN AFTER TESTATOR'S DEATH TAKES UNDER WILL.** A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

History: Enacted March 21, 1872.

§ 1340. **MISTAKES AND OMISSIONS.** When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received.

History: Enacted March 21, 1872.

§ 1341. WHEN DEVISES AND BEQUESTS VEST. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

History: Enacted March 21, 1872.

§ 1342. WHEN CANNOT BE DEVESTED. A testamentary disposition, when vested, cannot be devested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

History: Enacted March 21, 1872.

§ 1343. DEATH OF DEVISEE OR LEGATEE. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section thirteen hundred and ten.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 234; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 403, held unconstitutional, see history, § 4 ante.

§ 1344. INTERESTS IN REMAINDER ARE NOT AFFECTED. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator.

History: Enacted March 21, 1872.

§ 1345. CONDITIONAL DEVISES AND BEQUESTS. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

History: Enacted March 21, 1872.

§ 1346. **CONDITION PRECEDENT, WHAT.** A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

History: Enacted March 21, 1872.

§ 1347. **EFFECT OF CONDITION PRECEDENT.** Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfilment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

History: Enacted March 21, 1872.

§ 1348. **CONDITIONS PRECEDENT, WHEN DEEMED PERFORMED.** A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

History: Enacted March 21, 1872.

§ 1349. **CONDITIONS SUBSEQUENT, WHAT.** A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be devested by some subsequent act or event.

History: Enacted March 21, 1872.

§ 1350. **DEVISEES, ETC., TAKE AS TENANTS IN COMMON.** A devise or legacy given to more than one person vests in them as owners in common.

History: Enacted March 21, 1872.

§ 1351. **ADVANCEMENTS, WHEN ADEMPTIONS.** Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

History: Enacted March 21, 1872.

CHAPTER III.

GENERAL PROVISIONS.

§ 1357. Nature and designations of legacies.
§ 1358. Estates chargeable.
§ 1359. Order of resort to estate for debts.
§ 1360. Same. [For legacies.]
§ 1361. Same. [Legacies to kindred.]
§ 1362. Abatement.
§ 1363. Specific devises and legacies.
§ 1364. Heir's conveyance good, unless will is proved within four years.
§ 1365. Possession of legatees.
§ 1366. Bequest of interest.
§ 1367. Satisfaction.
§ 1368. Legacies, when due.
§ 1369. Interest.
§ 1370. Construction of these rules.
§ 1371. Executor according to the tenor.
§ 1372. Power to appoint is invalid.
§ 1373. Executor not to act till qualified.
§ 1374. Provisions as to revocations.
§ 1375. Execution and construction of prior wills not affected.
§ 1376. Law governing validity and interpretation of wills.
§ 1377. Liability of beneficiaries for testator's obligations.

§ 1357. NATURE AND DESIGNATION OF LEGACIES. Legacies are distinguished and designated, according to their nature, as follows:

1. **[Specific legacy.]** A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator;

2. **[Demonstrative legacy.]** A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy;

3. [Annuities.] An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy;

4. [Residuary legacy.] A residuary legacy embraces only that which remains after all the bequests of the will are discharged;

5. [General legacy.] All other legacies are general legacies.

History: Enacted March 21, 1872.

§ 1358. **ESTATES CHARGEABLE.** When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the Code of Civil Procedure.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 234.

§ 1359. **ORDER OF RESORT TO ESTATE FOR DEBTS.** The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of debts, in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts;

2. Property not disposed of by the will;

3. Property which is devised or bequeathed to a residuary legatee;

4. Property which is not specifically devised or bequeathed; and,

5. All other property ratably. Before any debts are paid, the expenses of the administration, and the allowance to the family, must be paid or provided for.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 234-235.

§ 1360. SAME. [FOR LEGACIES.] The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies.
2. Property not disposed of by the will.
3. Property which is devised or bequeathed to a residuary legatee.
4. Property which is specifically devised or bequeathed.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 235.

§ 1361. SAME. [LEGACIES TO KINDRED.] Legacies to husband, widow, or kindred of any class are chargeable only after legacies to persons not related to the testator.

History: Enacted March 21, 1872.

§ 1362. ABATEMENT. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

History: Enacted March 21, 1872.

§ 1363. SPECIFIC DEVISES AND LEGACIES. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the superior court to sell the property devised and bequeathed in the cases herein provided.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 8.

§ 1364. HEIR'S CONVEYANCE GOOD, UNLESS WILL IS PROVED WITHIN FOUR YEARS. The rights of a purchaser or encumbrancer of real property, in good

faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless within four years after the devisor's death, the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the superior court having jurisdiction thereof, or written notice of such devise is filed with the clerk of the county where the real property is situated.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 8; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 404, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 606.

§ 1365. **POSSESSION OF LEGATEES.** Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

History: Enacted March 21, 1872.

§ 1366. **BEQUEST OF INTEREST.** In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

History: Enacted March 21, 1872.

§ 1367. **SATISFACTION.** A legacy, or a gift in contemplation, fear, or peril of death, may be satisfied before death.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 235.

§ 1368. LEGACIES, WHEN DUE. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

History: Enacted March 21, 1872.

§ 1369. INTEREST. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

History: Enacted March 21, 1872.

§ 1370. CONSTRUCTION OF THESE RULES. The four preceding sections are in all cases to be controlled by a testator's express intention.

History: Enacted March 21, 1872.

§ 1371. EXECUTOR ACCORDING TO THE TENOR. Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

History: Enacted March 21, 1872.

§ 1372. POWER TO APPOINT IS INVALID. An authority to an executor to appoint an executor is void.

History: Enacted March 21, 1872.

§ 1373. EXECUTOR NOT TO ACT TILL QUALIFIED. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

History: Enacted March 21, 1872.

§ 1374. **PROVISIONS AS TO REVOCATIONS.** The provisions of this title in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect.

History: Enacted March 21, 1872.

§ 1375. **EXECUTION AND CONSTRUCTION OF PRIOR WILLS NOT AFFECTED.** The provisions of this title do not impair the validity of the execution of any will made before it takes effect, or affect the construction of any such will.

History: Enacted March 21, 1872.

§ 1376. **LAW GOVERNING VALIDITY AND INTERPRETATION OF WILLS.** The validity and interpretation of wills, wherever made, are governed, when relating to property within this state, by the law of this state, except as provided in section twelve hundred and eighty-five.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 235; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 404, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 607.

§ 1377. **LIABILITY OF BENEFICIARIES FOR TESTATOR'S OBLIGATIONS.** Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the Code of Civil Procedure.

History: Enacted March 21, 1872.

TITLE VII.

SUCCESSION.

§ 1383. Succession defined.
§ 1384. Intestate's estate, to whom passes.
§ 1385. Personal representatives [repealed].
§ 1386. Succession to and distribution of property of deceased person.
§ 1387. Illegitimate children to inherit in certain events.
§ 1388. Property of illegitimate child is succeeded to, when and how.
§ 1389. Degrees of kindred, how computed.
§ 1390. Same. [Collateral line.]
§ 1391. Same. [Ascending and descending direct line.]
§ 1392. Same. [Degrees in direct line.]
§ 1393. Same. [Degrees in collateral line.]
§ 1394. Relatives of the half-blood.
§ 1395. Advancements constitute part of distributive share.
§ 1396. Advancements, when too much, or not enough.
§ 1397. What are advancements.
§ 1398. Value of advancements, how determined.
§ 1399. When heir, advanced to, dies before decedent.
§ 1400. Inheritance of husband and wife from each other.
§ 1401. Distribution of common property on death of wife.
§ 1402. Distribution of common property on death of the husband.
§ 1403. Inheritance by representation.
§ 1404. Aliens may inherit, when, and how.
§ 1405. Succession not claimed, attorney-general to cause to be sold, and proceeds deposited with state treasurer.
§ 1406. When the property and estate escheat to the state.
§ 1407. Property escheated subject to charges as other property.
§ 1408. Successor liable for decedent's obligations.
§ 1409. Persons convicted of murder of decedent not to succeed.

§ 1383. SUCCESSION DEFINED. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

History: Enacted March 21, 1872.

§ 1384. INTESTATE'S ESTATE, TO WHOM PASSES. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court, for the purposes of administration.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 236.

§ 1385. PERSONAL REPRESENTATIVES [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 236.

§ 1386. SUCCESSION AND DISTRIBUTION OF PROPERTY OF DECEASED PERSON. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing thereof by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right of representation; but if there is no child of decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such

issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living and the issue of the deceased child or children by right of representation;

2. **If the decedent leaves no issue,** the estate goes one-half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either is dead the whole of said half goes to the other. If there is no father or mother, then one-half goes in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead then to the other;

3. **If there is neither issue, husband, wife, father, nor mother** then in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister, by right of representation;

4. **If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, sister,** nor the children or grandchildren of a deceased brother or sister, the whole estate goes to the surviving husband or wife;

5. **If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister,** the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote;

6. **If the decedent leaves several children, or one child and the issue of one or more children,** and any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children

of the same parent and to the issue of any such other children who are dead, by right of representation;

7. **If, at the death of such child, who dies under age, not having been married,** all the other children of his parents are also dead, and any of them has left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

8. **If the deceased is a widow, or widower, and leaves no issue,** and the estate, or any portion thereof, was common property of such decedent and his or her deceased spouse, while such spouse was living, such property goes in equal shares to the children of such deceased spouse and to the descendants of such children by right of representation, and if none, then one-half of such common property goes to the father and mother of such decedent in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such decedent and to the descendants of any deceased brother or sister by right of representation, and the other half goes to the father and mother of such deceased spouse in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such deceased spouse and to the descendants of any deceased brother or sister by right of representation.

If the estate, or any portion thereof, was separate property of such deceased spouse, while living, and came to such decedent from such spouse by descent, devise, or bequest, such property goes in equal shares to the children of such spouse and to the descendants of any deceased child by right of representation, and if none, then to the father and mother of such spouse, in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to

the brothers and sisters of such spouse and to the descendants of any deceased brother or sister by right of representation.

9. If the decedent leaves no husband, wife, or kindred, and there are no heirs to take his estate or any portion thereof, under subdivision eight of this section, the same escheats to the state for the support of the common schools.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 236; April 23, 1880, Code Amdts. 1880 (C. C. pt.), p. 14; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 404, held unconstitutional, see history, § 593 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, pp. 607, 608; amended March 18, 1907, Stats. and Amdts. 1907, pp. 567-569, Kerr's Stats. and Amdts. 1906-7, pp. 424, 425.

§ 1387. ILLEGITIMATE CHILDREN TO INHERIT IN CERTAIN EVENTS. Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother, respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 405, held unconstitutional, see history, § 4 ante.

§ 1388. **PROPERTY OF ILLEGITIMATE CHILD IS SUCCEEDED TO, WHEN AND HOW.** The estate of an illegitimate child, who has been legitimated by the subsequent marriage of its parents, or adopted by the father as provided by section two hundred and thirty, and who dies intestate, is succeeded to as if he were born in lawful wedlock. If such child has not been so legitimated or adopted, his estate goes to his lawful issue, or, if he leaves no issue, to his mother, or in case of her decease, to her heirs at law.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 406, held unconstitutional, see history, § 4 ante; amendment reenacted March 21, 1905, Stats. and Amdts. 1905, p. 609.

§ 1389. **DEGREE OF KINDRED, HOW COMPUTED.** The degree of kindred is established by the number of generations, and each generation is called a degree.

History: Enacted March 21, 1872.

§ 1390. **SAME. [COLLATERAL LINE.]** The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

History: Enacted March 21, 1872, founded upon Louisiana Civil Code, art. 886.

§ 1391. **SAME. [ASCENDING AND DESCENDING DIRECT LINE.]** The direct line is divided into a direct line descending and a direct line ascending. The first is that

which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

History: Enacted March 21, 1872, founded upon Louisiana Civil Code, art. 886.

§ 1392. **SAME. [DEGREES IN DIRECT LINE.]** In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

History: Enacted March 21, 1872, founded upon Louisiana Civil Code, art. 887.

§ 1393. **SAME. [DEGREES IN COLLATERAL LINE.]** In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on.

History: Enacted March 21, 1872, founded upon Louisiana Civil Code, art. 888; Montesq. Esprit des Lois, liv. 27.

§ 1394. **RELATIVES OF THE HALF-BLOOD.** Kindred of the half-blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

History: Enacted March 21, 1872, founded upon § 4 Act April 13, 1850, Stats. 1850, p. 221.

§ 1395. ADVANCEMENTS CONSTITUTE PART OF DISTRIBUTIVE SHARE. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other heir, is a part of the estate of the decedent for the purposes of division and distribution thereof among his heirs, and must be taken by such child, or other heir, toward his share of the estate of the decedent.

History: Enacted March 21, 1872, founded upon § 5 Act April 13, 1850, Stats. 1850, p. 221; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 406, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, p. 609.

§ 1396. ADVANCEMENTS, WHEN TOO MUCH, OR NOT ENOUGH. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

History: Enacted March 21, 1872, founded upon § 6 Act April 13, 1850, Stats. 1850, p. 221.

§ 1397. WHAT ARE ADVANCEMENTS. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made; or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

History: Enacted March 21, 1872, founded upon § 7 Act April 13, 1850, Stats. 1850, p. 221.

§ 1398. VALUE OF ADVANCEMENTS, HOW DETERMINED. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it

must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

History: Enacted March 21, 1872, founded upon § 8 Act April 13, 1850, Stats. 1850, p. 221.

§ 1399. **WHEN HEIR, ADVANCED TO, DIES BEFORE DECEDENT.** If any child, or other heir receiving advancement, dies before the decedent, leaving heirs, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

History: Enacted March 21, 1872, founded upon § 9 Act April 13, 1850, Stats. 1850, p. 221; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 406, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 609.

§ 1400. **INHERITANCE OF HUSBAND AND WIFE FROM EACH OTHER.** The provisions of the preceding sections of this title, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

History: Enacted March 21, 1872, founded upon § 10 Act April 13, 1850, Stats. 1850, p. 221.

§ 1401. **DISTRIBUTION OF COMMUNITY PROPERTY ON DEATH OF WIFE.** Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such

disposition, goes to her descendants, or heirs, exclusive of her husband.

History: Enacted March 21, 1872, founded upon § 1 Act April 17, 1850, Stats. 1850, p. 255, as amended April 4, 1864, Stats. 1863-4, p. 363; amended April 30, 1874, Code Amdts. 1873-4, p. 238.

§ 1402. DISTRIBUTION OF COMMON PROPERTY ON DEATH OF THE HUSBAND. Upon the death of the husband, one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

History: Enacted March 21, 1872, founded upon § 11 Act April 17, 1850, Stats. 1850, p. 255, as amended April 4, 1864, Stats. 1863-4, p. 363.

§ 1403. INHERITANCE BY REPRESENTATION. Inheritance or succession "by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

History: Enacted March 21, 1872, founded upon § 11 Act April 13, 1850, Stats. 1850, p. 221.

§ 1404. ALIENS MAY INHERIT, WHEN, AND HOW. Resident aliens may take in all cases by succession as citi-

zens; and no person capable of succeeding under the provisions of this title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

History: Enacted March 21, 1872, founded upon Const. 1849, art. I, § 17, and § 1 Act April 19, 1856, Stats. 1856, p. 137.

§ 1405. **SUCCESSION NOT CLAIMED, ATTORNEY-GENERAL TO CAUSE TO BE SOLD, AND PROCEEDS DEPOSITED WITH STATE TREASURER.** When succession is not claimed as provided in the preceding section, the superior court, on information, must direct the attorney-general to reduce the property to his possession or that of the state, or to cause it to be sold, and it or its proceeds to be deposited in the state treasury for the benefit of the person entitled thereto, to be paid to him, if, within five years after such deposit, he appears in the court in which such information was filed and asks for a judgment or order entitling him thereto.

History: Enacted March 21, 1872, founded upon § 1 Act April 19, 1856, Stats. 1856, p 137; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 406, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 609.

§ 1406. **WHEN THE PROPERTY AND ESTATE ESCHEAT TO THE STATE.** When such judgment or order is obtained, a certified copy thereof must be filed with the state treasurer as his voucher. Thereupon the property must be delivered, or the proceeds paid, to the claimant, on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the de-

cedent devolves and escheats to the people of the state, and must be placd by the state treasurer to the credit of the school fund.

History: Enacted March 21, 1872, founded upon § 1 Act April 19, 1856, Stats. 1856, p. 137; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 407, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 610.

§ 1407. **PROPERTY ESCHEATED SUBJECT TO CHARGES AS OTHER PROPERTY.** Real property passing to the state under the last section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of title eight, part three, of the Code of Civil Procedure.

History: Enacted March 21, 1872, founded upon Act April 30, 1855, Stats. 1855, pp. 221, 222, as amended by Act February 16, 1870, Stats. 1869-70, p. 72.

§ 1408. **SUCCESSOR LIABLE FOR DECEDENT'S OBLIGATIONS.** Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Code of Civil Procedure.

History: Enacted March 21, 1872.

§ 1409. **PERSON CONVICTED OF MURDER OF DECEDENT, NOT TO SUCCEED.** No person who has been convicted of the murder of the decedent shall be entitled to succeed to any portion of his estate; but the portion thereof to which he would otherwise be entitled to succeed descends to the other persons entitled thereto under the provisions of this title.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 610.

TITLE VIII.

WATER-RIGHTS.

§ 1410. Rights to water may be acquired by appropriation.
§ 1410a. Use of waters flowing out of state.
§ 1410b. Maintenance of flow of water in streams to canal intakes.
§ 1411. Appropriation must be for a useful purpose.
§ 1412. Point of diversion may be changed.
§ 1413. Water may be turned into natural channels.
§ 1414. First in time, first in right.
§ 1415. Notice of appropriation of water; contents. Recording.
§ 1416. Diligence in appropriation of water.
§ 1417. Completion defined.
§ 1418. Doctrine of relation applied.
§ 1419. Forfeiture.
§ 1420. Rights of present claimant.
§ 1421. Recorder to keep book in which to record notice.
§ 1422. Time within which to commence excavation on public reservations.

§ 1410. HOW RIGHTS TO WATER MAY BE ACQUIRED. All water or the use of water within the state of California is the property of the people of the state of California, but the right to the use of running water flowing in a river or stream or down a canyon or ravine may be acquired by appropriation in the manner provided by law; provided, that no water for the generation of electricity or electrical or other power may be appropriated for a longer period than twenty-five years, except by a municipal corporation, other than an irrigation district or a lighting district, or by an irrigation district when such electricity, electrical or other power is for use and distribution only within its own limits, and as subsidiary to and mainly for the purpose of serving and carrying out irrigation, or by a lighting district when such electricity, electrical or other power is for use and distribution only within its own limits.

History: Enacted March 21, 1872; amended April 8, 1911, Stats. and Amdts. 1911, p. 421. **In effect** immediately.

§ 1410a. USE OF WATERS FLOWING OUT OF STATE. The entire flow of water in any natural stream which carries water from the State of California into any other state is subject to use in the State of California, under the laws of the State of California, and the right may be, so far as not already acquired by use in the State of California, acquired and held under the laws of the State of California. The rights to the use of such water held under the laws of the State of California, shall be prior and superior to any rights to the waters of such streams held under the laws of any other state.

History: Enacted April 25, 1913, Stats. and Amdts. 1913, p. 93. **In effect** August 10, 1913.

§ 1410b. MAINTENANCE OF FLOW OF WATER IN STREAMS TO CANAL INTAKES. The flow of water in any natural stream to the intake of any canal diverting water therefrom for sale, rental or distribution to the public or for any public use, or the use of any farming neighborhood may be maintained by the person in charge of such use by restoring or repairing any break in the bank of the stream, and by maintaining the banks of the stream, and by preventing by physical structure and other appropriate means any increased flow of water through any natural by-ways of water which carry or threaten to carry such increase of water of the stream away from such intake; provided, however, that no act herein authorized, when performed, shall prevent, retard or obstruct the building thereafter of any reclamation, protection or flood control levee and the maintenance thereof; nor shall any act herein authorized prevent the use of any natural channel nor the enlargement thereof, for municipal purposes or for use in connection with any artificial system of drainage, irrigation or flood control not causing the flow of water in the channel at the intake of such canal to be less than the quantity of water the owners and appropriators may have the right to divert into said intake;

nor shall any act herein authorized prevent the use of any natural channel or the enlargement thereof to convey water appropriated under the laws of the State of California, where such natural channel shall be designated as the means, or part of the means of conveying the water so appropriated; nor shall the acts herein authorized limit the powers or authority of the water commission of the State of California to accomplish in its own way the purposes of this section, nor interfere with the construction of any flood control works in accordance with any plan of flood control adopted by the reclamation board.

History: Enactment approved June 9, 1915, Stats. and Amdts. 1915, p. 1376. **In effect** August 8, 1915.

§ 1411. APPROPRIATION MUST BE FOR A USEFUL PURPOSE. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

History: Enacted March 21, 1872.

§ 1412. POINT OF DIVERSION MAY BE CHANGED. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

History: Enacted March 21, 1872.

§ 1413. WATER MAY BE TURNED INTO NATURAL CHANNELS. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished.

History: Enacted March 21, 1872.

§ 1414. **FIRST IN TIME, FIRST IN RIGHT.** As between appropriators, the one first in time is the first in right.

History: Enacted March 21, 1872.

§ 1415. **NOTICE OF APPROPRIATION OF WATER; CONTENTS. RECORDING.** A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point of intended diversion, stating therein:

1. **That he claims the water** there flowing to the extent of (giving the number) inches, measured under a four-inch pressure;

2. **The purpose for which he claims it,** and the place of intended use;

3. **The means by which he intends to divert it,** and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it.

[Notice must be recorded.] A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted.

After filing such copy for record, the place of intended diversion or the place of intended use or the means by which it is intended to divert the water, may be changed by the person posting said notice or his assigns, if others are not injured by such change. This provision applies to notices already filed as well as to notices hereafter filed.

History: Enacted March 21, 1872; amended March 21, 1903, Stats. and Amdts. 1903, p. 361. **In force** March 21, 1903.

§ 1416. **DILIGENCE IN APPROPRIATION OF WATER.** Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, or the survey, road or trail building, necessarily incident thereto, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snows or

rain; provided, that if the erection of a dam has been recommended by the California debris commission at or near the place where it is intended to divert the water, the claimant shall have sixty days after the completion of such dam in which to commence the excavation or construction of the works in which he intends to divert the water; provided, that whenever any city and county, or any incorporated city or town within this state makes, or has made, or acquires, or has acquired any appropriation of any of the waters of this state in accordance with the provisions of section fourteen hundred and fifteen of this code, it shall not be necessary for such city and county, city or town to commence the work for development of more of the water so claimed than is actually necessary for the immediate needs of such city and county, city or town and it shall be held to be a sufficient compliance with the requirements of this chapter, to the full amount of water stated in the notice posted and recorded, for such city and county, city or town to within sixty days make the necessary surveys, or within six months to authorize the issuance of municipal bonds, for the construction of the necessary works designed to supply such city and county, city or town with the water required for immediate use. Any appropriation heretofore made by any such city and county, city or town in connection with which surveys were at any time made, or an issue of bonds authorized for the construction of any portion of the works necessary for a diversion of any part of the water appropriated, is hereby confirmed to the full amount of water stated in the original notice or notices.

History: Enacted March 21, 1872; amended March 22, 1895, Stats. and Amdts. 1895, p. 396; March 21, 1907, Stats. and Amdts. 1907, p. 780, Kerr's Stats. and Amdts. 1906-7, p. 425; May 1, 1911, Stats. and Amdts. 1911, p. 1419.

§ 1417. **COMPLETION DEFINED.** By "completion" is meant conducting the waters to the place of intended use.

History: Enacted March 21, 1872.

§ 1418. DOCTRINE OF RELATION APPLIED. By a compliance with the above rules the claimant's right to the use of the water relates back to the time the notice was posted.

History: Enacted March 21, 1872.

§ 1419. FORFEITURE. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith.

History: Enacted March 21, 1872.

§ 1420. RIGHTS OF PRESENT CLAIMANT. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must, after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases.

History: Enacted March 21, 1872.

§ 1421. RECORDER TO KEEP BOOK IN WHICH TO RECORD NOTICES. The recorder of each county must keep a book, in which he must record the notices provided for in this title.

History: Enacted March 21, 1872.

§ 1422. TIME WITHIN WHICH TO COMMENCE EXCAVATION ON PUBLIC RESERVATIONS. If the place of intended diversion or any part of the route of intended conveyance of water so claimed, be within, and a part of, any national park, forest reservation, or other public reservation, and be so shown in the notice of appropriation of said water, then the claimant shall have sixty days, after the grant of authority to occupy and use such park

or reservation for such intended purpose, within which to commence the excavation or construction of said works; provided, that within sixty days after the posting of said notice of appropriation, as provided in section fourteen hundred and fifteen of the Civil Code, the claimant shall in good faith commence (and thereafter diligently and continuously, except when temporarily interrupted by snow or rain, prosecute to completion) such surveys and other work as under the regulations governing such park or reservation, may be required as preliminary to, or for use with, an application for such authority; and provided also that the claimant shall in good faith on completion of said survey and preliminary work, apply to the officer, board, or body, having charge of such park or reservation, for such authority, and shall thereafter, prosecute said application with reasonable diligence.

History: Enacted March 21, 1872; repealed March 15, 1887, Stats. and Amdts. 1887, p. 114; present act, which is entirely new, passed March 24, 1903, Stats. and Amdts. 1903, p. 397.

TITLE IX.

HYDRAULIC MINING.

§ 1424. Where hydraulic mining can be carried on.
§ 1425. Meaning of hydraulic mining.

§ 1424. WHERE HYDRAULIC MINING CAN BE CARRIED ON. The business of hydraulic mining may be carried on within the state of California wherever and whenever the same can be carried on without material injury to the navigable streams, or the lands adjacent thereto.

History: Enacted March 24, 1893, Stats. and Amdts. 1893, p. 337.

§ 1425. MEANING OF HYDRAULIC MINING. Hydraulic mining, within the meaning of this title, is mining by means of the application of water, under pressure, through a nozzle, against a natural bank.

History: Enacted March 24, 1893, Stats. and Amdts. 1893, p. 337.

[A new title added by Act of legislature March 13, 1909, (Stats. and Amdts. 1909, p. 313), to take effect and be in force on and after July 1, 1909.]

TITLE X.

LOCATING MINING CLAIMS, TUNNEL RIGHTS, MILL-SITES, ETC.

§ 1426. Who may locate mining claim, etc. Manner of location.
§ 1426a. Locator must define boundaries, how.
§ 1426b. Recording copy of notice. Fee of recorder.
§ 1426c. Location of placer claim. How made.
§ 1426d. Same. Recording copy of notice. Fee of recorder.
§ 1426e. Locator of tunnel right. Posting notice. Contents of notice.
§ 1426f. Boundary lines of tunnel. How established.
§ 1426g. Recording notice of tunnel location. Recorder's fee.
§ 1426h. Amended notice of location. Not to interfere with existing rights of others.
§ 1426i. Boundaries established by mineral surveyor.
§ 1426j. Mill site location. By proprietor of vein, etc. Amount of land and manner of making.
§ 1426k. Same. Recording copy of location notice. Fee of recorder.
§ 1426l. Annual work or improvements. Amount required.
§ 1426m. Same. Affidavit, contents of. Certified copy of evidence of performance.
§ 1426n. Same. Recording affidavit. Fee for.
§ 1426o. Co-owner. Notice to delinquent co-owner. Proof of service.
§ 1426p. Record of location. Evidence of same force as original notice.
§ 1426q. Record of instruments. Certified copies admissible as evidence.
§ 1426r. Mining district rules and regulations. Not affected by act.
§ 1426s. Development work. Failure or neglect to perform in manner and time required. Effect of.
Sec. 2. Repealing clause.

§ 1426. **WHO MAY LOCATE MINING CLAIM, ETC. MANNER OF LOCATION.** Any person, a citizen of the United States, or who has declared his intention to become such, who discovers a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnibar, lead, tin, copper, or other valuable deposit, may locate a claim upon such vein or lode, by defining the boundaries of the claim, in the manner hereinafter described, and by posting a notice of such location, at the point of discovery, which notice must contain: First—The name of the lode or claim. Second—The name of the locator or locators. Third—The number of linear feet claimed in length along the course of the vein, each way from the point of discovery, with the width on each side of the center of the claim, and the general course of the vein or lode, as near as may be. Fourth—The date of location. Fifth—Such a description of the claim by reference to some natural object, or permanent monument, as will identify the claim located.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 313.

§ 1426a. **LOCATOR MUST DEFINE BOUNDARIES, HOW.** The locator must define the boundaries of his claim so that they may be readily traced, and in no case shall the claim extend more than fifteen hundred feet along the course of the vein or lode, nor more than three hundred feet on either side thereof, measured from the center line of the vein at the surface.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 314.

§ 1426b. **RECORDING COPY OF NOTICE. FEE OF RECORDER.** Within thirty days after the posting of his notice of location upon a lode mining claim, the locator shall record a true copy thereof in the office of the county re-

corder of the county in which such claim is situated, for which service the county recorder shall receive a fee of one dollar.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 314.

§ 1426c. **LOCATION OF PLACER CLAIM. HOW MADE.** The location of a placer claim shall be made in the following manner: By posting thereon, upon a tree, rock in place, stone, post or monument, a notice of location, containing the name of the claim, name of locator or locators, date of location, number of feet or acreage claimed, such a description of the claim by reference to some natural object or permanent monument as will identify the claim located, and by marking the boundaries so that they may be readily traced; provided, that where the United States survey has been extended over the land embraced in the location, the claim may be taken by legal subdivisions and no other reference than those of said survey shall be required and the boundaries of a claim so located and described need not be staked or monumented. The description by legal subdivisions shall be deemed the equivalent of marking.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 314.

§ 1426d. **SAME. RECORDING COPY OF NOTICE. FEE OF RECORDER.** Within thirty days after the posting of the notice of location of a placer claim, the locator shall record a true copy thereof in the office of the county recorder of the county in which such claim is situated, for which service the recorder shall receive a fee of one dollar.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 314.

§ 1426e. LOCATOR OF TUNNEL RIGHT. POSTING NOTICE. CONTENTS OF NOTICE. The locator of a tunnel right or location, shall locate his tunnel right or location by posting a notice of location at the face or point of commencement of the tunnel, which must contain: First—The name of the locator or locators. Second—The date of the location. Third—The proposed course or direction of the tunnel. Fourth—A description of the tunnel, with reference to some natural object or permanent monument as shall identify the claim or tunnel right.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 314.

§ 1426f. BOUNDARY LINES OF TUNNEL. HOW ESTABLISHED. The boundary lines of the tunnel shall be established by stakes or monuments placed along the lines at an interval of not more than six hundred feet from the face or point of commencement of the tunnel to the terminus of three thousand feet therefrom.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 314.

§ 1426g. RECORDING NOTICE OF TUNNEL LOCATION. RECORDER'S FEE. Within thirty days after the posting the notice of location of the tunnel right or location, the locator shall record a true copy thereof, in the office of the county recorder of the county in which such claim is situated, for which service the recorder shall receive a fee of one dollar.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 314.

§ 1426h. AMENDED NOTICE OF LOCATION. NOT TO INTERFERE WITH EXISTING RIGHTS OF OTHERS. If at any time the locator of any mining claim here-

tofore or hereafter located, or his assigns, shall apprehend that his original location notice was defective, erroneous, or that the requirements of the law had not been complied with before filing; or in case the original notice was made prior to the passage of this act, and he shall be desirous of securing the benefit of this act, such locator, or his assigns, may file an additional notice, subject to the provisions of this act; provided, that such amended location notice does not interfere with the existing rights of others at the time of posting and filing such amended location notice, and no such amended location notice or the record thereof, shall preclude the claimant, or claimants from proving any such title as he or they may have held under previous locations.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 315.

§ 1426i. **BOUNDARIES ESTABLISHED BY MINERAL SURVEYOR.** Where a locator, or his assigns, has the boundaries and corners of his claim established by a United States deputy mineral surveyor, or a licensed surveyor of this state, and his claim connected with the corner of the public or minor surveys of an established initial point, and incorporates into the record of the claim, the field notes of such survey, and attaches to and files with such location notice, a certificate of the surveyor, setting forth: First, that said survey was actually made by him, giving the date thereof; Second, the name of the claim surveyed and the location thereof; Third, that the description incorporated in the declaratory statement is sufficient to identify; such survey and certificate becomes a part of the record, and such record is prima facie evidence of the facts therein contained.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 315.

§ 1426j. **MILL-SITE LOCATION. BY PROPRIETOR OF VEIN, ETC. AMOUNT OF LAND AND MANNER OF MAKING.** The proprietor of a vein or lode claim or

mine, or the owner of a quartz mill or reduction works, or any person qualified by the laws of the United States, may locate not more than five acres of non-mineral land as a mill-site. Such location shall be made in the same manner as hereinbefore required for locating placer claims.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 315.

§ 1426k. SAME. RECORDING COPY OF LOCATION NOTICE. FEE OF RECORDER. The locator of a mill site claim or location shall, within thirty days from the date of his location, record a true copy of his location notice with the county recorder of the county in which such location is situated, for which service the recorder shall receive a fee of one dollar.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 315.

§ 1426l. ANNUAL WORK OR IMPROVEMENTS. AMOUNT REQUIRED. The amount of work done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to-wit: One hundred dollars annually.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 315.

§ 1426m. SAME. AFFIDAVIT, CONTENTS OF. CERTIFIED COPY OF EVIDENCE OF PERFORMANCE. Whenever mine owner, company, or corporation shall have performed the labor and made the improvements required by law upon any mining claim, the person in whose behalf such labor was performed or improvements made, or some one in his behalf, shall within thirty days after the time limited for performing such labor or making such improvements make and have recorded by the county recorder, in

books kept for that purpose, in the county in which such mining claim is situated, an affidavit setting forth the value of labor or improvements made, the name of the claim, and the name of the owner or claimant of said claim at whose expense the same was made or performed. Such affidavit, or a copy thereof, duly certified by the county recorder, shall be prima facie evidence of the performance of such labor or the making of such improvements, or both.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 315.

§ 1426n. **SAME. RECORDING AFFIDAVIT, FEE FOR.** For recording the affidavit herein required, the county recorder shall receive a fee of ten cents per folio, twenty cents for endorsement and ten cents for indexing the name of each claim and each owner.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 316; amended May 21, 1915, Stats. and Amdts. 1915, p. 734. **In effect** August 8, 1915.

§ 1426o. **CO-OWNER. NOTICE TO DELINQUENT CO-OWNER. PROOF OF SERVICE.** Whenever a co-owner or co-owners of a mining claim shall give a delinquent co-owner or co-owners the notice in writing or notice by publication provided for in section twenty-three hundred and twenty-four, Revised Statutes of the United States, an affidavit of the person giving such notice, stating the time, place, manner of service, and by whom and upon whom such service was made, shall be attached to a true copy of such notice, and such notice and affidavit must be recorded in the office of the county recorder, in books kept for that purpose, in the county in which the claim is situated, within ninety days, after the giving of such notice; for the recording of which said recorder shall receive the same fees as are now allowed by law for recording deeds;

[Notice by publication—Proof of service.]Or if such notice is given by publication in a newspaper, there shall be attached to a printed copy of such notice an affidavit of the printer or his foreman, or principal clerk of such paper, stating the date of the first, last and each insertion of such notice therein, and where the newspaper was published during that time, and the name of such newspaper. Such affidavit and notice shall be recorded as aforesaid, within one hundred and eighty days after the first publication thereof.

[Notice and certified copy—Prima facie evidence.] The original of such notice and affidavit, or a duly certified copy of the record thereof, shall be prima facie evidence that the delinquent mentioned in section twenty-three hundred and twenty-four has failed or refused to contribute his proportion of the expenditure required by that section, and of the service of publication of said notice; provided, the writing or affidavit hereinafter provided for is not of record.

[Contribution by co-owner—Payment of costs—Receipt to delinquent.] If such delinquent shall, within the ninety days required by section twenty-three hundred and twenty-four, aforesaid, contribute to his co-owner or co-owners, his proportion of such expenditures, and also all costs of service of the notice required by this section, whether incurred for publication charges, or otherwise, such co-owner or co-owners shall sign and deliver to the delinquent or delinquents a writing, stating that the delinquent or delinquents by name has within the time required by section twenty-three hundred and twenty-four aforesaid, contributed his share for the year ..... upon the ..... mine, and further stating therein the district, county and state wherein the same is situated, and the book and page where the location notice is recorded, if said mine was located under the provisions of this act;

[Receipt to co-owner to be recorded—Fees.] Such writing shall be recorded in the office of the county recorder of

said county, for which he shall receive the same fees as are now allowed by law for recording deeds.

[Failure to give co-owner receipt—Penalty.] If such co-owner or co-owners shall fail to sign and deliver such writing to the delinquent or delinquents within twenty days after such contribution, the co-owner or co-owners so failing as aforesaid shall be liable to the penalty of one hundred dollars to be recovered by any person for the use of the delinquent or delinquents in any court of competent jurisdiction.

[Failure to give receipt—Affidavit of contribution.] If such co-owner or co-owners fail to deliver such writing within said twenty days, the delinquent, with two disinterested persons having personal knowledge of such contribution, may make affidavit setting forth in what manner, the amount of, to whom, and upon what mine, such contribution was made. Such affidavit, or a record thereof, in the office of the county recorder, of the county in which such mine is situated, shall be prima facie evidence of such contribution.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 316.

§ 1426p. **RECORD OF LOCATION. EVIDENCE OF SAME FORCE AS ORIGINAL NOTICE.** The record of any location of a mining claim, mill site or tunnel right, in the office of the county recorder, as herein provided shall be received in evidence, and have the same force and effect in the courts of the state as the original notice.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 317.

§ 1426q. **RECORD OF INSTRUMENTS. CERTIFIED COPIES ADMISSIBLE AS EVIDENCE.** Copies of the records of all instruments required to be recorded by the provisions of this act, duly certified by the recorder, in whose custody such records are, may be read in evidence, under

the same circumstances and rules as are now, or may be hereafter provided by law, for using copies of instruments relating to real estate, duly executed or acknowledged or proved and recorded.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 317.

§ 1426r. **MINING DISTRICT RULES AND REGULATIONS. NOT AFFECTED BY ACT.** The provisions of this act shall not in any manner be construed as affecting or abolishing any mining district or the rules and regulations thereof within the State of California.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 317.

§ 1426s. **DEVELOPMENT WORK. FAILURE OR NEGLECT TO PERFORM IN MANNER AND TIME REQUIRED. EFFECT OF.** The failure or neglect of any locator of a mining claim to perform development work of the character, in the manner and within the time required by the laws of the United States, shall disqualify such locators from relocating the ground embraced in the original location or mining claim or any part thereof under the mining laws, within three years after the date of his original location and any attempted re-location thereof by any of the original locators shall render such location void.

[Repealing clause.] Sec. 2. All acts and parts of acts in conflict with this act, are hereby repealed.

History: Enacted March 13, 1909, Stats. and Amdts. 1909, p. 317.

DIVISION THIRD.

Part I. Obligations in General, §§ 1427-1543.
II. Contracts, §§ 1549-1701.
III. Obligations Imposed by Law, §§ 1708-1715.
IV. Obligations Arising from Particular Transactions, §§ 1721-3268.

PART I.

OBLIGATIONS IN GENERAL.

Title I. Definition of Obligations, §§ 1427-1428.
II. Interpretation of Obligations, §§ 1429-1451.
III. Transfer of Obligations, §§ 1457-1468.
IV. Extinction of Obligations, §§ 1473-1543.

TITLE I.

DEFINITION OF OBLIGATIONS.

§ 1427. Obligation, what.
§ 1428. How incurred and enforced.

§ 1427. **OBLIGATION, WHAT.** An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

History: Enacted March 21, 1872.

§ 1428. **HOW INCURRED AND ENFORCED.** An obligation arises either from:

1. The contract of the parties; or,
2. The operation of law.

An obligation arising from operation of law may be enforced in the manner provided by law or by civil action or proceeding.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 239.

TITLE II.

INTERPRETATION OF OBLIGATIONS.

Chapter I. General Rules of Interpretation, § 1429.
II. Joint or Several Obligations, §§ 1430-1432.
III. Conditional Obligations, §§ 1434-1442.
IV. Alternative Obligations, §§ 1448-1451.

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

§ 1429. General rules.

§ 1429. **GENERAL RULES.** The rules which govern the interpretation of contracts are prescribed by part two of this division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

History: Enacted March 21, 1872.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

§ 1430. Obligations, joint or several, etc.
§ 1431. When joint.
§ 1432. Contribution between joint parties.

§ 1430. **OBLIGATIONS, JOINT OR SEVERAL, ETC.** An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint;
2. Several; or,
3. Joint and several.

History: Enacted March 21, 1872.

§ 1431. **WHEN JOINT.** An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the

special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

History: Enacted March 21, 1872.

§ 1432. **CONTRIBUTION BETWEEN JOINT PARTIES.** A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

History: Enacted March 21, 1872.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

§ 1434. Obligation, when conditional.
§ 1435. Conditions, kinds of.
§ 1436. Conditions precedent.
§ 1437. Conditions concurrent.
§ 1438. Conditions subsequent.
§ 1439. Performance, etc., of conditions, when essential.
§ 1440. When performance, etc., excused.
§ 1441. Impossible or unlawful conditions void.
§ 1442. Conditions involving forfeiture, how construed.

§ 1434. **OBLIGATION, WHEN CONDITIONAL.** An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

History: Enacted March 21, 1872.

§ 1435. **CONDITIONS, KINDS OF.** Conditions may be precedent, concurrent or subsequent.

History: Enacted March 21, 1872.

§ 1436. **CONDITIONS PRECEDENT.** A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

History: Enacted March 21, 1872.

§ 1437. **CONDITIONS CONCURRENT.** Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

History: Enacted March 21, 1872.

§ 1438. **CONDITION SUBSEQUENT.** A condition subsequent is one referring to a future event, upon the happen-

ing of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

History: Enacted March 21, 1872.

§ 1439. **PERFORMANCE, ETC., OF CONDITIONS, WHEN ESSENTIAL.** Before any party to an obligation can require another party to perform any act under it, he must fulfil all conditions precedent thereto imposed upon himself; and must be able and offer to fulfil all conditions concurrent so imposed upon him on the like fulfilment by the other party, except as provided by the next section.

History: Enacted March 21, 1872.

§ 1440. **WHEN PERFORMANCE, ETC., EXCUSED.** If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former party.

History: Enacted March 21, 1872.

§ 1441. **IMPOSSIBLE OR UNLAWFUL CONDITIONS VOID.** A condition in a contract, the fulfilment of which is impossible or unlawful, within the meaning of the article on the object of contracts, or which is repugnant to the nature of the interest created by the contract, is void.

History: Enacted March 21, 1872.

§ 1442. **CONDITIONS INVOLVING FORFEITURE, HOW CONSTRUED.** A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

History: Enacted March 21, 1872.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

§ 1448. Who has the right of selection.
§ 1449. Right of selection, how lost.
§ 1450. Alternative indivisible.
§ 1451. Nullity of one or more of alternative obligations.

§ 1448. **WHO HAS THE RIGHT OF SELECTION.** If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

History: Enacted March 21, 1872.

§ 1449. **RIGHT OF SELECTION, HOW LOST.** If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

History: Enacted March 21, 1872.

§ 1450. **ALTERNATIVES INDIVISIBLE.** The party having the right of selection between alternative acts must select one of them in its entirety, and cannot select part of one and part of another without the consent of the other party.

History: Enacted March 21, 1872.

§ 1451. **NULLITY OF ONE OR MORE OF ALTERNATIVE OBLIGATIONS.** If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other stood alone.

History: Enacted March 21, 1872.

TITLE III.

TRANSFER OF OBLIGATIONS.

§ 1457. Burden of obligation not transferable.
§ 1458. Rights arising out of obligation transferable.
§ 1459. Non-negotiable instruments may be transferred.
§ 1460. Covenants running with land, what.
§ 1461. What covenants run with land.
§ 1462. Same. [Covenant for benefit of property.]
§ 1463. Same. [Covenants to pay rent, etc.]
§ 1464. What covenants run with land when assigns are named.
§ 1465. Who are bound by covenants.
§ 1466. Who are not.
§ 1467. Apportionment of covenants.
§ 1468. Transfer of obligations; covenants to run with land.

§ 1457. BURDEN OF OBLIGATION NOT TRANSFERABLE. The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise, except as provided by section fourteen hundred and sixty-six.

History: Enacted March 21, 1872.

§ 1458. RIGHT ARISING OUT OF OBLIGATION TRANSFERABLE. A right arising out of an obligation is the property of the person to whom it is due and may be transferred as such.

History: Enacted March 21, 1872.

§ 1459. NON-NEGOTIABLE INSTRUMENTS MAY BE TRANSFERRED. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights

of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

History: Enacted March 21, 1872.

§ 1460. **COVENANTS RUNNING WITH LAND, WHAT.** Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

History: Enacted March 21, 1872.

§ 1461. **WHAT COVENANTS RUN WITH LAND.** The only covenants which run with the land are those specified in this title, and those which are incidental thereto.

History: Enacted March 21, 1872.

§ 1462. **SAME. [COVENANT FOR BENEFIT OF PROPERTY.]** Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land.

History: Enacted March 21, 1872.

§ 1463. **SAME. [COVENANTS TO PAY RENT, ETC.]** The last section includes covenants "of warranty," "for quiet enjoyment," or for further assurance on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of the grantee.

History: Enacted March 21, 1872.

§ 1464. **WHAT COVENANTS RUN WITH LAND WHEN ASSIGNS ARE NAMED.** A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or

annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with land so far only as the assigns thus mentioned are concerned.

History: Enacted March 21, 1872.

§ 1465. **WHO ARE BOUND BY COVENANTS.** A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property.

History: Enacted March 21, 1872.

§ 1466. **WHO ARE NOT.** No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits.

History: Enacted March 21, 1872.

§ 1467. **APPORTIONMENT OF COVENANTS.** Where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

History: Enacted March 21, 1872.

§ 1468. **TRANSFER OF OBLIGATIONS; COVENANTS TO RUN WITH LAND.** A covenant made by the owner of land with the owner of other land to do or refrain from doing some act on his own land, which doing or refraining is expressed to be for the benefit of the land of the covenantee, and which is made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with both of such parcels of land.

History: Enacted March 21, 1905, Stats. and Amdts. 1905, p. 610.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

Chapter I. Performance, §§ 1473-1479.
II. Offer of Performance, §§ 1485-1505.
III. Prevention of Performance or Offer, §§ 1511-1515.
IV. Accord and Satisfaction, §§ 1521-1524.
V. Novation, §§ 1530-1533.
VI. Release, §§ 1541-1543.

CHAPTER I.

PERFORMANCE.

§ 1473. Obligation extinguished by performance.
§ 1474. Performance by one of several joint debtors.
§ 1475. Performance to one of joint creditors.
§ 1476. Effect of directions by creditors.
§ 1477. Partial performance.
§ 1478. Payment, what.
§ 1479. Application of general performance.

§ 1473. OBLIGATION EXTINGUISHED BY PERFORMANCE. Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

History: Enacted March 21, 1872; amended by Code Commission, Act April 16, 1901, Stats. and Amdts. 1900-1, p. 407, held unconstitutional, see history, § 4 ante.

§ 1474. PERFORMANCE BY ONE OF SEVERAL JOINT DEBTORS. Performance of an obligation, by one

of several persons who are jointly liable under it, extinguishes the liability of all.

History: Enacted March 21, 1872.

§ 1475. **PERFORMANCE TO ONE OF JOINT CREDITORS.** An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the title on deposit.

History: Enacted March 21, 1872.

§ 1476. **EFFECT OF DIRECTIONS BY CREDITORS.** If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

History: Enacted March 21, 1872.

§ 1477. **PARTIAL PERFORMANCE.** A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

History: Enacted March 21, 1872.

§ 1478. **PAYMENT, WHAT.** Performance of an obligation for the delivery of money only, is called payment.

History: Enacted March 21, 1872.

§ 1479. **APPLICATION OF GENERAL PERFORMANCE.** Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

1. If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

2. If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of [the] debtor.

3. If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

(1) Of interest due at the time of the performance.

(2) Of principal due at that time.

(3) Of the obligation earliest in date of maturity.

(4) Of an obligation not secured by a lien or collateral undertaking.

(5) Of an obligation secured by a lien or collateral undertaking.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 239, 240; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 407, held unconstitutional, see history, § 4 ante.

CHAPTER II.

OFFER OF PERFORMANCE.

§ 1485. Obligation extinguished by offer of performance.
§ 1486. Offer of partial performance.
§ 1487. By whom to be made.
§ 1488. To whom to be made.
§ 1489. Where offer may be made.
§ 1490. When offer must be made.
§ 1491. Same. [When obligation does not fix time.]
§ 1492. Compensation after delay in performance.
§ 1493. Offer to be made in good faith.
§ 1494. Conditional offer.
§ 1495. Ability and willingness essential.
§ 1496. Production of thing to be delivered not necessary.
§ 1497. Thing offered to be kept separate.
§ 1498. Performance of condition precedent.
§ 1499. Written receipts.
§ 1500. Extinction of pecuniary obligation.
§ 1501. Objections to mode of offer.
§ 1502. Title to thing offered.
§ 1503. Custody of thing offered.
§ 1504. Effect of offer on accessories of obligation.
§ 1505. Creditor's retention of thing which he refuses to accept.

§ 1485. OBLIGATION EXTINGUISHED BY OFFER OF PERFORMANCE. An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

History: Enacted March 21, 1872.

§ 1486. OFFER OF PARTIAL PERFORMANCE. An offer of partial performance is of no effect.

History: Enacted March 21, 1872.

§ 1487. **BY WHOM TO BE MADE.** An offer of performance must be made by the debtor, or by some person on his behalf and with his assent.

History: Enacted March 21, 1872.

§ 1488. **TO WHOM TO BE MADE.** An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and if not, wherever the creditor may be found.

History: Enacted March 21, 1872; amended March 30, 1874, Stats. and Amdts. 1873-4, p. 240.

§ 1489. **WHERE OFFER MAY BE MADE.** In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor; or,

2. Wherever the person to whom the offer ought to be made can be found; or,

3. If such person cannot, with reasonable diligence, be found within this state, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can, with reasonable diligence, be found within the state; or,

4. If this cannot be done, then at any place within this state.

History: Enacted March 21, 1872.

§ 1490. **WHEN OFFER MUST BE MADE.** Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

History: Enacted March 21, 1872.

§ 1491. SAME. [WHEN OBLIGATION DOES NOT FIX TIME.] Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform.

History: Enacted March 21, 1872.

§ 1492. COMPENSATION AFTER DELAY IN PERFORMANCE. Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any other persons, in the mean time.

History: Enacted March 21, 1872.

§ 1493. OFFER TO BE MADE IN GOOD FAITH. An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

History: Enacted March 21, 1872.

§ 1494. CONDITIONAL OFFER. An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform.

History: Enacted March 21, 1872.

§ 1495. ABILITY AND WILLINGNESS ESSENTIAL. An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

History: Enacted March 21, 1872.

§ 1496. **PRODUCTION OF THING TO BE DELIVERED NOT NECESSARY.** The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance, unless the offer is accepted.

History: Enacted March 21, 1872.

§ 1497. **THING OFFERED TO BE KEPT SEPARATE.** A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

History: Enacted March 21, 1872.

§ 1498. **PERFORMANCE OF CONDITION PRECEDENT.** When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

History: Enacted March 21, 1872.

§ 1499. **WRITTEN RECEIPTS.** A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

History: Enacted March 21, 1872.

§ 1500. **EXTINCTION OF PECUNIARY OBLIGATION.** An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within this state, of good repute, and notice thereof is given to the creditor.

History: Enacted March 21, 1872.

§ 1501. **OBJECTIONS TO MODE OF OFFER.** All objections to the mode of an offer of performance, which the

creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

History: Enacted March 21, 1872.

§ 1502. **TITLE TO THING OFFERED.** The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

History: Enacted March 21, 1872.

§ 1503. **CUSTODY OF THING OFFERED.** The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

History: Enacted March 21, 1872.

§ 1504. **EFFECT OF OFFER ON ACCESSORIES OF OBLIGATION.** An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof.

History: Enacted March 21, 1872.

§ 1505. **CREDITOR'S RETENTION OF THING WHICH HE REFUSES TO ACCEPT.** If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is a gratuitous depositary thereof.

History: Enacted March 21, 1872.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

§ 1511. What excuses performance, etc.
§ 1512. Effect of prevention of performance.
§ 1513. Same [repealed].
§ 1514. Same. [Ratable portion of consideration, when.]
§ 1515. Effect of refusal to accept performance before offer.

§ 1511. WHAT EXCUSES PERFORMANCE, ETC. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. **When such performance or offer is prevented or delayed by the act of the creditor,** or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

2. **When it is prevented or delayed by an irresistible, superhuman cause,** or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or,

3. **When the debtor is induced not to make it, by any act of the creditor** intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

History: Enacted March 21, 1872.

§ 1512. EFFECT OF PREVENTION OF PERFORMANCE. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

History: Enacted March 21, 1872; amended March 30, 1874. Code Amdts. 1873-4, p. 240.

§ 1513. SAME [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 240.

§ 1514. SAME. [RATABLE PORTION OF CONSIDERATION, WHEN.] If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

History: Enacted March 21, 1872.

§ 1515. EFFECT OF REFUSAL TO ACCEPT PERFORMANCE BEFORE OFFER. A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

History: Enacted March 21, 1872.

CHAPTER IV.

ACCORD AND SATISFACTION.

§ 1521. Accord, what.
§ 1522. Effect of accord.
§ 1523. Satisfaction, what.
§ 1524. Part performance.

§ 1521. ACCORD, WHAT. An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 240.

§ 1522. EFFECT OF ACCORD. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

History: Enacted March 21, 1872.

§ 1523. SATISFACTION, WHAT. Acceptance, by the creditor, of the consideration of an accord extinguishes the obligation, and is called satisfaction.

History: Enacted March 21, 1872.

§ 1524. PART PERFORMANCE. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 241.

CHAPTER V.

NOVATION.

§ 1530. Novation, what.
§ 1531. Modes of novation.
§ 1532. Novation a contract.
§ 1533. Rescission of novation.

§ 1530. **NOVATION, WHAT.** Novation is the substitution of a new obligation for an existing one.

History: Enacted March 21, 1872.

§ 1531. **MODES OF NOVATION.** Novation is made:

1. **By the substitution of a new obligation** between the same parties, with intent to extinguish the old obligation;

2. **By the substitution of a new debtor** in place of the old one, with intent to release the latter; or,

3. **By the substitution of a new creditor** in place of the old one, with intent to transfer the rights of the latter to the former.

History: Enacted March 21, 1872.

§ 1532. **NOVATION A CONTRACT.** Novation is made by contract, and is subject to all the rules concerning contracts in general.

History: Enacted March 21, 1872.

§ 1533. **RESCISSION OF NOVATION.** When the obligation of a third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying

with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor, or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 241.

CHAPTER VI.

RELEASE.

§ 1541. Obligation extinguished by release.
§ 1542. Certain claims not affected by general release.
§ 1543. Release of [one of] several joint debtors.

§ 1541. **OBLIGATION EXTINGUISHED BY RELEASE.** An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

History: Enacted March 21, 1872.

§ 1542. **CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.** A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 241.

§ 1543. **RELEASE OF [ONE OF] SEVERAL JOINT DEBTORS.** A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

History: Enacted March 21, 1872.

PART II.

CONTRACTS.

Title I. Nature of a Contract, §§ 1549-1615.
II. Manner of Creating Contracts, §§ 1619-1629.
III. Interpretation of Contracts, §§ 1635-1661.
IV. Unlawful Contracts, §§ 1667-1676.
V. Extinction of Contracts, §§ 1682-1701.

TITLE I.

NATURE OF A CONTRACT.

Chapter I. Definition, §§ 1549, 1550.
II. Parties, §§ 1556-1559.
III. Consent, §§ 1565-1589.
IV. Object, §§ 1595-1599.
V. Consideration, §§ 1605-1615.

CHAPTER I.

DEFINITION.

§ 1549. Contract, what.
§ 1550. Essential elements of contract.

§ 1549. **CONTRACT, WHAT.** A contract is an agreement to do or not to do a certain thing.

History: Enacted March 21, 1872.

§ 1550. **ESSENTIAL ELEMENTS OF CONTRACT.** It is essential to the existence of a contract that there should be:

1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and,
4. A sufficient cause or consideration.

History: Enacted March 21, 1872.

CHAPTER II.

PARTIES.

§ 1556. Who may contract.
§ 1557. Minors, etc.
§ 1558. Identification of parties necessary.
§ 1559. When contract for benefit of third person may be enforced.

§ 1556. WHO MAY CONTRACT. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

History: Enacted March 21, 1872.

§ 1557. MINORS, ETC. Minors and persons of unsound mind, have only such capacity as is defined by part one of division one of this code.

History: Enacted March 21, 1872.

§ 1558. IDENTIFICATION OF PARTIES NECESSARY. It is essential to the validity of a contract not only that the parties should exist, but that it should be possible to identify them.

History: Enacted March 21, 1872.

§ 1559. WHEN CONTRACT FOR BENEFIT OF THIRD PERSON MAY BE ENFORCED. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

History: Enacted March 21, 1872.

CHAPTER III.

CONSENT.

§ 1565. Essentials of consent.
§ 1566. Consent, when voidable.
§ 1567. Apparent consent, when not free.
§ 1568. When deemed to have been obtained by fraud, etc.
§ 1569. Duress, what.
§ 1570. Menace, what.
§ 1571. Fraud, actual or constructive.
§ 1572. Actual fraud, what.
§ 1573. Constructive fraud.
§ 1574. Actual fraud a question of fact.
§ 1575. Undue influence, what.
§ 1576. Mistake, what.
§ 1577. Mistake of fact.
§ 1578. Mistake of law.
§ 1579. Mistake of foreign laws.
§ 1580. Mutuality of consent.
§ 1581. Communication of consent.
§ 1582. Mode of communicating acceptance of proposal.
§ 1583. When communication deemed complete.
§ 1584. Acceptance by performance of conditions.
§ 1585. Acceptance must be absolute.
§ 1586. Revocation of proposal.
§ 1587. Revocation, how made.
§ 1588. Ratification of contract, void for want of consent.
§ 1589. Assumption of obligation by acceptance of benefits.

§ 1565. **ESSENTIALS OF CONSENT.** The consent of the parties to a contract must be:

1. Free;
2. Mutual; and,
3. Communicated by each to the other.

History: Enacted March 21, 1872.

§ 1566.—**CONSENT, WHEN VOIDABLE.** A consent which is not free is nevertheless not absolutely void, but

may be rescinded by the parties, in the manner prescribed by the chapter on rescission.

History: Enacted March 21, 1872.

§ 1567. **APPARENT CONSENT, WHEN NOT FREE.** An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
5. Mistake.

History: Enacted March 21, 1872.

§ 1568. **WHEN DEEMED TO HAVE BEEN OBTAINED BY FRAUD, ETC.** Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.

History: Enacted March 21, 1872.

§ 1569. **DURESS, WHAT.** Duress consists in:

1. **Unlawful confinement of the person** of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;

2. **Unlawful detention of the property** of any such person; or,

3. **Confinement of such person, lawful in form, but fraudulently obtained,** or fraudulently made unjustly harassing or oppressive.

History: Enacted March 21, 1872.

§ 1570. **MENACE, WHAT.** Menace consists in a threat:

1. Of such duress as is specified in subdivisions one and three of the last section;

2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,

3. Of injury to the character of any such person.

History: Enacted March 21, 1872.

§ 1571. **FRAUD, ACTUAL OR CONSTRUCTIVE.** Fraud is either actual or constructive.

History: Enacted March 21, 1872.

§ 1572. **ACTUAL FRAUD, WHAT.** Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. **The suggestion, as a fact, of that which is not true,** by one who does not believe it to be true;

2. **The positive assertion, in a manner not warranted** by the information of the person making it, of that which is not true, though he believes it to be true;

3. **The suppression of that which is true,** by one having knowledge or belief of the fact;

4. **A promise made without any intention of performing it;** or,

5. **Any other act fitted to deceive.**

History: Enacted March 21, 1872.

§ 1573. **CONSTRUCTIVE FRAUD.** Constructive fraud consists:

1. **In any breach of duty** which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,

2. **In any such act or omission** as the law specially declares to be fraudulent, without respect to actual fraud.

History: Enacted March 21, 1872.

§ 1574. **ACTUAL FRAUD A QUESTION OF FACT.** Actual fraud is always a question of fact.

History: Enacted March 21, 1872.

§ 1575. **UNDUE INFLUENCE, WHAT.** Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

History: Enacted March 21, 1872.

§ 1576. **MISTAKE, WHAT.** Mistake may be either of fact or law.

History: Enacted March 21, 1872.

§ 1577. **MISTAKE OF FACT.** Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

History: Enacted March 21, 1872.

§ 1578. **MISTAKE OF LAW.** Mistake of law constitutes a mistake, within the meaning of this article, only when it arises from:

1. **A misapprehension of the law by all parties,** all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. **A misapprehension of the law by one party,** of which the others are aware at the time of contracting, but which they do not rectify.

History: Enacted March 21, 1872.

§ 1579. **MISTAKE OF FOREIGN LAWS.** Mistake of foreign laws is a mistake of fact.

History: Enacted March 21, 1872.

§ 1580. **MUTUALITY OF CONSENT.** Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

History: Enacted March 21, 1872.

§ 1581. **COMMUNICATION OF CONSENT.** Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

History: Enacted March 21, 1872.

§ 1582. **MODE OF COMMUNICATING ACCEPTANCE OF PROPOSAL.** If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

History: Enacted March 21, 1872.

§ 1583. **WHEN COMMUNICATION DEEMED COMPLETE.** Consent is deemed to be fully communicated be-

tween the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

History: Enacted March 21, 1872.

§ 1584. **ACCEPTANCE BY PERFORMANCE OF CONDITIONS.** Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

History: Enacted March 21, 1872.

§ 1585. **ACCEPTANCE MUST BE ABSOLUTE.** An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

History: Enacted March 21, 1872.

§ 1586. **REVOCATION OF PROPOSAL.** A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

History: Enacted March 21, 1872.

§ 1587. **REVOCATION, HOW MADE.** A proposal is revoked:

1. **By the communication of notice of revocation** by the proposer to the other party, in the manner prescribed by sections fifteen hundred and eighty-one and fifteen hundred and eighty-three, before his acceptance has been communicated to the former;

2. **By the lapse of the time prescribed** in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

3. By the failure of the acceptor to fulfil a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

History: Enacted March 21, 1872.

§ 1588. RATIFICATION OF CONTRACT, VOID FOR WANT OF CONSENT. A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent.

History: Enacted March 21, 1872.

§ 1589. ASSUMPTION OF OBLIGATION BY ACCEPTANCE OF BENEFITS. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

History: Enacted March 21, 1872.

CHAPTER IV.

OBJECT OF A CONTRACT.

§ 1595. Object, what.
§ 1596. Requisites of object.
§ 1597. Impossibility, what.
§ 1598. When contract wholly void.
§ 1599. When contract partially void.

§ 1595. OBJECT, WHAT. The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

History: Enacted March 21, 1872.

§ 1596. REQUISITES OF OBJECT. The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

History: Enacted March 21, 1872.

§ 1597. IMPOSSIBILITY, WHAT. Everything is deemed possible except that which is impossible in the nature of things.

History: Enacted March 21, 1872.

§ 1598. WHEN CONTRACT WHOLLY VOID. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

History: Enacted March 21, 1872.

§ 1599. WHEN CONTRACT PARTIALLY VOID. Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

History: Enacted March 21, 1872.

CHAPTER V.

CONSIDERATION.

§ 1605. Good consideration, what.
§ 1606. How far legal or moral obligation is a good consideration.
§ 1607. Consideration lawful.
§ 1608. Effect of its illegality.
§ 1609. Consideration executed or executory.
§ 1610. Executory consideration.
§ 1611. How ascertained.
§ 1612. Effect of impossibility of ascertaining consideration.
§ 1613. Same. [Possible of execution on face.]
§ 1614. Written instrument presumptive evidence of consideration.
§ 1615. Burden of proof to invalidate sufficient consideration.

§ 1605. GOOD CONSIDERATION, WHAT. Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

History: Enacted March 21, 1872.

§ 1606. HOW FAR LEGAL OR MORAL OBLIGATION IS A GOOD CONSIDERATION. An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent coresponding with the extent of the obligation, but no further or otherwise.

History: Enacted March 21, 1872.

§ 1607. **CONSIDERATION LAWFUL.** The consideration of a contract must be lawful within the meaning of section sixteen hundred and sixty-seven.

History: Enacted March 21, 1872.

§ 1608. **EFFECT OF ITS ILLEGALITY.** If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

History: Enacted March 21, 1872.

§ 1609. **CONSIDERATION EXECUTED OR EXECUTORY.** A consideration may be executed or executory, in whole or in part. In so far as it is executory it is subject to the provisions of chapter four of this title.

History: Enacted March 21, 1872.

§ 1610. **EXECUTORY CONSIDERATION.** When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

History: Enacted March 21, 1872.

§ 1611. **HOW ASCERTAINED.** When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

History: Enacted March 21, 1872.

§ 1612. **EFFECT OF IMPOSSIBILITY OF ASCERTAINING CONSIDERATION.** Where a contract provides

an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

History: Enacted March 21, 1872.

§ 1613. SAME. [POSSIBLE OF EXECUTION ON FACE.] Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

History: Enacted March 21, 1872.

§ 1614. WRITTEN INSTRUMENT PRESUMPTIVE EVIDENCE OF CONSIDERATION. A written instrument is presumptive evidence of a consideration.

History: Enacted March 21, 1872.

§ 1615. BURDEN OF PROOF TO INVALIDATE SUFFICIENT CONSIDERATION. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

History: Enacted March 21, 1872.

Said to be "not quite clear" whether this section applies to an illegal consideration, by Commissioner Vanclief in Graham vs. Lorimer, 83 Cal 173, 177, 23 Pac. Rep. 286.

TITLE II.

MANNER OF CREATING CONTRACTS.

§ 1619. Contracts, express or implied.
§ 1620. Express contract, what.
§ 1621. Implied contract, what.
§ 1622. What contracts may be oral.
§ 1623. Contract not in writing through fraud, may be enforced against fraudulent party.
§ 1624. What contracts must be in writing.
§ 1625. Effect of written contracts.
§ 1626. Contract in writing, takes effect when.
§ 1627. Provisions of chapter on transfers of real property.
§ 1628. Corporate seal, how affixed.
§ 1629. Provisions abolishing seals made applicable.

§ 1619. **CONTRACTS, EXPRESS OR IMPLIED.** A contract is either express or implied.

History: Enacted March 21, 1872.

§ 1620. **EXPRESS CONTRACT, WHAT.** An express contract is one, the terms of which are stated in words.

History: Enacted March 21, 1872.

§ 1621. **IMPLIED CONTRACT, WHAT.** An implied contract is one, the existence and terms of which are manifested by conduct.

History: Enacted March 21, 1872.

§ 1622. **WHAT CONTRACTS MAY BE ORAL.** All contracts may be oral, except such as are specially required by statute to be in writing.

History: Enacted March 21, 1872.

§ 1623. **CONTRACT NOT IN WRITING THROUGH FRAUD, MAY BE ENFORCED AGAINST FRAUDULENT PARTY.** Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

History: Enacted March 21, 1872.

§ 1624. **WHAT CONTRACTS MUST BE IN WRITING.** The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section twenty-seven hundred and ninety-four;

3. An agreement made upon consideration of marriage other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accepts or receives part of such goods and chattels or the evidences, or some of them, of such things in action, or pays at the time some part of the purchase money; but when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of the sale, the price, and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the

party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

7. An agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath any property, or to make any provision for any person by will.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 241; March 9, 1878, Code Amdts. 1877-8, p. 86; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 408, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 611.

§ 1625. **EFFECT OF WRITTEN CONTRACTS.** The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 408, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 611.

§ 1626. **CONTRACT IN WRITING, TAKES EFFECT WHEN.** A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

History: Enacted March 21, 1872.

§ 1627. **PROVISIONS OF CHAPTER ON TRANSFERS OF REAL PROPERTY.** The provisions of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

History: Enacted March 21, 1872.

§ 1628. CORPORATE SEAL, HOW AFFIXED. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

History: Enacted March 21, 1872.

§ 1629. PROVISIONS ABOLISHING SEALS MADE APPLICABLE. All distinctions between sealed and unsealed instruments are abolished.

History: Enacted March 21, 1872.

TITLE III.

INTERPRETATION OF CONTRACTS.

§ 1635. Uniformity of interpretation.
§ 1636. Contracts, how to be interpreted.
§ 1637. Intention of parties, how ascertained.
§ 1638. Intention to be ascertained from language.
§ 1639. Interpretation of written contracts.
§ 1640. Writing, when disregarded.
§ 1641. Effect to be given to every part of contract.
§ 1642. Several contracts, when taken together.
§ 1643. Interpretation in favor of contract.
§ 1644. Words to be understood in usual sense.
§ 1645. Technical words.
§ 1646. Law of place.
§ 1647. Contracts explained by circumstances.
§ 1648. Contract restricted to its evident object.
§ 1649. Interpretation in sense in which promisor believed promisee to rely.
§ 1650. Particular clause subordinate to general intent.
§ 1651. Contract, partly written and partly printed.
§ 1652. Repugnancies, how reconciled.
§ 1653. Inconsistent words rejected.
§ 1654. Words to be taken most strongly against whom.
§ 1655. Reasonable stipulations, when implied.
§ 1656. Necessary incidents implied.
§ 1657. Time of performance of contract.
§ 1658. Time, when of essence [repealed].
§ 1659. When joint and several.
§ 1660. Same. [In singular number.]
§ 1661. Executed and executory contracts, what.

§ 1635. **UNIFORMITY OF INTERPRETATION.** All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

History: Enacted March 21, 1872.

§ 1636. **CONTRACTS, HOW TO BE INTERPRETED.** A contract must be so interpreted as to give effect to the

mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

History: Enacted March 21, 1872.

§ 1637. INTENTION OF PARTIES, HOW ASCERTAINED. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

History: Enacted March 21, 1872.

§ 1638. INTENTION TO BE ASCERTAINED FROM LANGUAGE. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

History: Enacted March 21, 1872.

§ 1639. INTERPRETATION OF WRITTEN CONTRACTS. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this title.

History: Enacted March 21, 1872.

§ 1640. WRITING, WHEN DISREGARDED. When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

History: Enacted March 21, 1872.

§ 1641. EFFECT TO BE GIVEN TO EVERY PART OF CONTRACT. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

History: Enacted March 21, 1872.

§ 1642. SEVERAL CONTRACTS, WHEN TAKEN TOGETHER. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

History: Enacted March 21, 1872.

§ 1643. INTERPRETATION IN FAVOR OF CONTRACT. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

History: Enacted March 21, 1872.

§ 1644. WORDS TO BE UNDERSTOOD IN USUAL SENSE. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

History: Enacted March 21, 1872.

§ 1645. TECHNICAL WORDS. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

History: Enacted March 21, 1872.

§ 1646. LAW OF PLACE. A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

History: Enacted March 21, 1872.

§ 1647. CONTRACTS EXPLAINED BY CIRCUMSTANCES. A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

History: Enacted March 21, 1872.

§ 1648. CONTRACT RESTRICTED TO ITS EVIDENT OBJECT. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

History: Enacted March 21, 1872.

§ 1649. INTERPRETATION IN SENSE IN WHICH PROMISOR BELIEVED PROMISEE TO RELY. If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

History: Enacted March 21, 1872.

§ 1650. PARTICULAR CLAUSES SUBORDINATE TO GENERAL INTENT. Particular clauses of a contract are subordinate to its general intent.

History: Enacted March 21, 1872.

§ 1651. CONTRACT, PARTLY WRITTEN AND PARTLY PRINTED. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which

are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

History: Enacted March 21, 1872.

§ 1652. **REPUGNANCIES, HOW RECONCILED.** Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

History: Enacted March 21, 1872.

§ 1653. **INCONSISTENT WORDS REJECTED.** Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

History: Enacted March 21, 1872.

§ 1654. **WORDS TO BE TAKEN MOST STRONGLY AGAINST WHOM.** In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

History: Enacted March 21, 1872.

§ 1655. **REASONABLE STIPULATIONS, WHEN IMPLIED.** Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

History: Enacted March 21, 1872.

§ 1656. NECESSARY INCIDENTS IMPLIED. All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

History: Enacted March 21, 1872.

§ 1657. TIME OF PERFORMANCE OF CONTRACT. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained.

History: Enacted March 21, 1872.

§ 1658. TIME, WHEN OF ESSENCE [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 242.

§ 1659. WHEN JOINT AND SEVERAL. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

History: Enacted March 21, 1872.

§ 1660. SAME. [IN SINGULAR NUMBER.] A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

History: Enacted March 21, 1872.

§ 1661. EXECUTED AND EXECUTORY CONTRACTS, WHAT. An executed contract is one, the object of which is fully performed. All others are executory.

History: Enacted March 21, 1872.

TITLE IV.

UNLAWFUL CONTRACTS.

§ 1667. What is unlawful.
§ 1668. Certain contracts unlawful.
§ 1669. Penalties void [repealed].
§ 1670. Contract fixing damages, void.
§ 1671. Exception.
§ 1672. Restraints upon legal proceedings [repealed].
§ 1673. Contract in restraint of trade, void.
§ 1674. Exception in favor of sale of good-will.
§ 1675. Exception in favor of partnership arrangements.
§ 1676. Contract in restraint of marriage, void.

§ 1667. **WHAT IS UNLAWFUL.** That is not lawful which is:

1. Contrary to an express provision of law;

2. Contrary to the policy of express law, though not expressly prohibited; or,

3. Otherwise contrary to good morals.

History: Enacted March 21, 1872.

§ 1668. **CERTAIN CONTRACTS UNLAWFUL.** All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or wilful injury to the person or property of another, or violation of law, whether wilful or negligent, are against the policy of the law.

History: Enacted March 21, 1872.

§ 1669. **PENALTIES VOID** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874. Code Amdts. 1873-4, p. 242.

§ 1670. **CONTRACT FIXING DAMAGES, VOID.** Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

History: Enacted March 21, 1872.

§ 1671. **EXCEPTION.** The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

History: Enacted March 21, 1872.

§ 1672. **RESTRAINTS UPON LEGAL PROCEEDINGS** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 242.

§ 1673. **CONTRACT IN RESTRAINT OF TRADE, VOID.** Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent void.

History: Enacted March 21, 1872.

§ 1674. **EXCEPTION IN FAVOR OF SALE OF GOOD-WILL.** One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein.

History: Enacted March 21, 1872.

§ 1675. **EXCEPTION IN FAVOR OF PARTNERSHIP ARRANGEMENTS.** Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

History: Enacted March 21, 1872.

§ 1676. **CONTRACT IN RESTRAINT OF MARRIAGE, VOID.** Every contract in restraint of the marriage of any person, other than a minor, is void.

History: Enacted March 21, 1872.

TITLE V.

EXTINCTION OF CONTRACTS.

Chapter I. Contracts, How Extinguished, § 1682.
II. Rescission, §§ 1688-1691.
III. Alteration and Cancelation, §§ 1697-1701.

CHAPTER I.

CONTRACTS, HOW EXTINGUISHED.

§ 1682. Contract, how extinguished.

§ 1682. CONTRACT, HOW EXTINGUISHED. A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this title.

History: Enacted March 21, 1872.

CHAPTER II.

RESCISSION.

§ 1688. Rescission extinguishes contract.
§ 1689. When party may rescind.
§ 1690. When stipulations against right to rescind do not defeat it.
§ 1691. Rescission, how effected.

§ 1688. RESCISSION EXTINGUISHES CONTRACT. A contract is extinguished by its rescission.

History: Enacted March 21, 1872.

§ 1689. **WHEN PARTY MAY RESCIND.** A party to a contract may rescind the same in the following cases only.

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part;

3. If such consideration becomes entirely void from any cause;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties.

History: Enacted March 21, 1872.

§ 1690. **WHEN STIPULATIONS AGAINST RIGHT TO RESCIND DO NOT DEFEAT IT.** A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

History: Enacted March 21, 1872.

§ 1691. **RESCISSION, HOW EFFECTED.** Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. **He must rescind promptly,** upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. **He must restore** to the other party everything of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 408, held unconstitutional, see history, § 4 ante.

CHAPTER III.

ALTERATION AND CANCELATION.

§ 1697. Alteration of verbal contracts.
§ 1698. Written contracts, how modified.
§ 1699. Extinction by cancelation, etc.
§ 1700. Extinction by unauthorized alteration.
§ 1701. Alteration of duplicate, not to prejudice.

§ 1697. ALTERATION OF VERBAL CONTRACTS. A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 342.

§ 1698. WRITTEN CONTRACTS, HOW MODIFIED. A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 243.

§ 1699. EXTINCTION BY CANCELATION, ETC. The destruction or cancelation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

History: Enacted March 21, 1872.

§ 1700. EXTINCTION BY UNAUTHORIZED ALTERATION. The intentional destruction, cancelation, or material alteration of a written contract, by a party entitled to

any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

History: Enacted March 21, 1872.

§ 1701. **ALTERATION OF DUPLICATE, NOT TO PREJUDICE.** Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

History: Enacted March 21, 1872.

PART III.

OBLIGATIONS IMPOSED BY LAW.

§ 1708. Abstinence from injury.
§ 1709. Fraudulent deceit.
§ 1710. Deceit, what.
§ 1711. Deceit upon the public, etc.
§ 1712. Restoration of thing wrongfully acquired.
§ 1713. When demand necessary.
§ 1714. Responsibility for wilful acts, negligence, etc.
§ 1715. Other obligations.

§ 1708. **ABSTINENCE FROM INJURY.** Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

History: Enacted March 21, 1872.

§ 1709. **FRAUDULENT DECEIT.** One who wilfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

History: Enacted March 21, 1872.

§ 1710. **DECEIT, WHAT.** A deceit, within the meaning of the last section, is either:

1. **The suggestion, as a fact,** of that which is not true, by one who does not believe it to be true;

2. **The assertion, as a fact,** of that which is not true, by one who has no reasonable ground for believing it to be true;

3. **The suppression of a fact,** by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. **A promise,** made without any intention of performing it.

History: Enacted March 21, 1872.

§ 1711. **DECEIT UPON THE PUBLIC, ETC.** One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

History: Enacted March 21, 1872.

§ 1712. **RESTORATION OF THING WRONGFULLY ACQUIRED.** One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

History: Enacted March 21, 1872.

§ 1713. **WHEN DEMAND NECESSARY.** The restoration required by the last section must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

History: Enacted March 21, 1872.

§ 1714. **RESPONSIBILITY FOR WILFUL ACTS, NEGLIGENCE, ETC.** Every one is responsible, not only for the result of his wilful acts, but also for an injury occasioned to another by his want of ordinary care or skill in

the management of his property or person, except so far as the latter has, wilfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the title on compensatory relief.

History: Enacted March 21, 1872.

§ 1715. **OTHER OBLIGATIONS.** Other obligations are prescribed by divisions one and two of this code.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 409, held unconstitutional, see history, § 4 ante.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS

Title I. Sale, §§ 1721-1798.
II. Exchange, §§ 1804-1807.
III. Deposit, §§ 1813-1878.
IV. Loan, §§ 1884-1920.
V. Hiring, §§ 1925-1959.
VI. Service, §§ 1965-2079.
VII. Carriage, §§ 2085-2209.
VIII. Trust, §§ 2215-2289.
IX. Agency, §§ 2295-2389.
X. Partnership, §§ 2395-2520.
XI. Insurance, §§ 2527-2766.
XII. Indemnity, §§ 2772-2781.
XIII. Guaranty, §§ 2787-2866.
XIV. Lien, §§ 2872-3080.
XV. Negotiable Instruments, §§ 3086-3262.
XVI. General Provisions, § 3268.

TITLE I.

SALE.

Chapter I. General Provisions, §§ 1721-1741.
II. Rights and Obligations of the Seller, §§ 1748-1778.
III. Rights and Obligations of the Buyer, §§ 1784-1786.
IV. Sale by Auction, §§ 1792-1798.

CHAPTER I.

GENERAL PROVISIONS

Article I. Sale, §§ 1721, 1722.
II. Agreement for Sale, §§ 1726-1734.
III. Form of the Contract, §§ 1739-1741.

ARTICLE I.

SALE.

§ 1721. Sale, what.
§ 1722. Subject of sale.

§ 1721. **SALE, WHAT.** Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

History: Enacted March 21, 1872.

§ 1722. **SUBJECT OF SALE.** The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

History: Enacted March 21, 1872.

ARTICLE II.

AGREEMENT FOR SALE.

§ 1726. Agreement for sale.
§ 1727. Agreement to sell.
§ 1728. Agreement to buy.
§ 1729. Agreement to sell and buy.
§ 1730. What may be the subject of the contract.
§ 1731. Agreement to sell real property.
§ 1732. Form of grant required by such contract [repealed].
§ 1733. Usual common-law covenants required by such contracts, when.
§ 1734. Form of such covenants.

§ 1726. **AGREEMENT FOR SALE.** An agreement for sale is either:

1. An agreement to sell;
2. An agreement to buy; or,
3. A mutual agreement to sell and buy.

History: Enacted March 21, 1872.

§ 1727. **AGREEMENT TO SELL.** An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

History: Enacted March 21, 1872.

§ 1728. **AGREEMENT TO BUY.** An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

History: Enacted March 21, 1872.

§ 1729. **AGREEMENT TO SELL AND BUY.** An agreement to sell and buy is a contract by which one engages to

transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

History: Enacted March 21, 1872.

§ 1730. **WHAT MAY BE THE SUBJECT OF THE CONTRACT.** Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not.

History: Enacted March 21, 1872.

§ 1731. **AGREEMENT TO SELL REAL PROPERTY.** An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 243.

§ 1732. **FORM OF GRANT REQUIRED BY SUCH CONTRACT** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 243.

§ 1733. **USUAL COMMON-LAW COVENANTS REQUIRED BY SUCH CONTRACTS, WHEN.** An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant covenants of "seizin," "quiet enjoyment," "further assurance," "general warranty," and "against encumbrances."

History: Enacted March 21, 1872.

§ 1734. **FORM OF SUCH COVENANTS.** The covenants mentioned in the last section must be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seized in

fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

History: Enacted March 21, 1872.

ARTICLE III.

FORM OF THE CONTRACT.

§ 1739. Contract for sale of personal property.
§ 1740. Contract to manufacture.
§ 1741. Contract for sale of real property.

§ 1739. **CONTRACT TO SELL PERSONAL PROPERTY.** No sale of personal property, or agreement to buy or sell it for a price of two hundred dollars or more, is valid, unless:

1. **The agreement or some note or memorandum** thereof be in writing, and subscribed by the party to be charged, or by his agent; or,

2. **The buyer accepts and receives part of the thing sold,** or when it consists of a thing in action, part of the evidences thereof, or some of them; or,

3. **The buyer, at the time of sale, pays a part** of the price.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 243.

§ 1740. **CONTRACT TO MANUFACTURE.** An agreement to manufacture a thing, from materials furnished by the manufacturer, or by another person, is not within the provisions of the last section.

History: Enacted March 21, 1872.

§ 1741. **CONTRACT FOR SALE OF REAL PROPERTY.** No agreement for the sale of real property, or of an interest therein, is valid, unless the same, or some note or

memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized, in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 243, 244.

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER

Article I. Rights and Duties Before Delivery, §§ 1748, 1749.
II. Delivery, §§ 1753-1758.
III. Warranty, §§ 1763-1778.

ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

§ 1748. When seller must act as depositary.
§ 1749. When seller may resell.

§ 1748. **WHEN SELLER MUST ACT AS DEPOSITARY.** After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

History: Enacted March 21, 1872.

§ 1749. **WHEN SELLER MAY RESELL.** If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the title on liens.

History: Enacted March 21, 1872.

ARTICLE II.

DELIVERY.

§ 1753. Delivery on demand.
§ 1754. Delivery, where made.
§ 1755. Expense of transportation.
§ 1756. Notice of election as to delivery.
§ 1757. Buyer's directions as to manner of sending thing sold.
§ 1758. Delivery to be within reasonable hours.

§ 1753. **DELIVERY ON DEMAND.** One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

History: Enacted March 21, 1872.

§ 1754. **DELIVERY, WHERE MADE.** Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

History: Enacted March 21, 1872.

§ 1755. **EXPENSE OF TRANSPORTATION.** One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

History: Enacted March 21, 1872.

§ 1756. **NOTICE OF ELECTION AS TO DELIVERY.** When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other

party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

History: Enacted March 21, 1872.

§ 1757. **BUYER'S DIRECTIONS AS TO MANNER OF SENDING THING SOLD.** If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

History: Enacted March 21, 1872.

§ 1758. **DELIVERY TO BE WITHIN REASONABLE HOURS.** The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

History: Enacted March 21, 1872.

ARTICLE III.

WARRANTY.

§ 1763. Warranty, what.
§ 1764. No implied warranty in mere contract of sale.
§ 1765. Warranty of title to personal property.
§ 1766. Warranty on sale by sample.
§ 1767. When seller knows that buyer relies on his statements, etc.
§ 1768. Merchandise not in existence.
§ 1769. Manufacturer's warranty against latent defects.
§ 1770. Thing bought for particular purpose.
§ 1771. When thing cannot be examined by buyer.
§ 1772. Trade-marks.
§ 1773. Other marks.
§ 1774. Warranty on sale of written instrument.
§ 1775. Warranty of provisions for domestic use.
§ 1776. Warranty on sale of good-will.
§ 1777. Warranty upon judicial sale.
§ 1778. Effect of general warranty.

§ 1763. WARRANTY, WHAT. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

History: Enacted March 21, 1872.

§ 1764. NO IMPLIED WARRANTY IN MERE CONTRACT OF SALE. Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty.

History: Enacted March 21, 1872.

§ 1765. WARRANTY OF TITLE TO PERSONAL PROPERTY. One who sells or agrees to sell personal

property, as his own, thereby warrants that he has a good and unencumbered title thereto.

History: Enacted March 21, 1872.

§ 1766. **WARRANTY ON SALE BY SAMPLE.** One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

History: Enacted March 21, 1872.

§ 1767. **WHEN SELLER KNOWS THAT BUYER RELIES ON HIS STATEMENTS, ETC.** One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

History: Enacted March 21, 1872.

§ 1768. **MERCHANDISE NOT IN EXISTENCE.** One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

History: Enacted March 21, 1872.

§ 1769. **MANUFACTURER'S WARRANTY AGAINST LATENT DEFECTS.** One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

History: Enacted March 21, 1872.

§ 1770. **THING BOUGHT FOR PARTICULAR PURPOSE.** One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

History: Enacted March 21, 1872.

§ 1771. **WHEN THING CANNOT BE EXAMINED BY BUYER.** One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

History: Enacted March 21, 1872.

§ 1772. **TRADE-MARKS.** One who sells or agrees to sell any article to which there is affixed or attached a trademark, thereby warrants that mark to be genuine and lawfully used.

History: Enacted March 21, 1872.

§ 1773. **OTHER MARKS.** One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was, in whole or in part, produced, manufactured, or prepared, thereby warrants the truth thereof.

History: Enacted March 21, 1872.

§ 1774. **WARRANTY ON SALE OF WRITTEN INSTRUMENT.** One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 244.

Originally this section contained a further provision, which was stricken out in 1874, that seller warrants instrument to be what it purports to be and to be binding according to its purport upon all parties thereto.—Kendall vs. Parker, 103 Cal. 319, 324, 42 Am. St. Rep. 117, 37 Pac. Rep. 401.

§ 1775. WARRANTY OF PROVISIONS FOR DOMESTIC USE. One who makes a business of selling provisions for domestic use warrants by a sale thereof, to one who buys for actual consumption, that they are sound and wholesome.

History: Enacted March 21, 1872.

§ 1776. WARRANTY ON SALE OF GOOD-WILL. One who sells the good-will of a business thereby warrants that he will not endeavor to draw off any of the customers.

History: Enacted March 21, 1872.

§ 1777. WARRANTY UPON JUDICIAL SALE. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

History: Enacted March 21, 1872.

§ 1778. EFFECT OF GENERAL WARRANTY. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware, or which were then easily discernible by him without the exercise of peculiar skill; but it extends to all other defects.

History: Enacted March 21, 1872.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

§ 1784. Price, when to be paid.
§ 1785. Right to inspect goods.
§ 1786. Rights in case of breach of warranty.

§ 1784. PRICE, WHEN TO BE PAID. A buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it.

History: Enacted March 21, 1872.

§ 1785. RIGHT TO INSPECT GOODS. On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so.

History: Enacted March 21, 1872.

§ 1786. RIGHTS IN CASE OF BREACH OF WARRANTY. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

History: Enacted March 21, 1872.

CHAPTER IV.

SALE BY AUCTION.

§ 1792. Sale by auction, what.
§ 1793. Sale, when complete.
§ 1794. Withdrawal of bid.
§ 1795. Sale under written conditions.
§ 1796. Rights of buyer upon sale without reserve.
§ 1797. By bidding.
§ 1798. Auctioneer's memorandum of sale.

§ 1792. **SALE BY AUCTION, WHAT.** A sale by auction is a sale by public outcry to the highest bidder on the spot.

History: Enacted March 21, 1872.

§ 1793. **SALE, WHEN COMPLETE.** A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

History: Enacted March 21, 1872.

§ 1794. **WITHDRAWAL OF BID.** Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

History: Enacted March 21, 1872.

§ 1795. **SALE UNDER WRITTEN CONDITIONS.** When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit.

History: Enacted March 21, 1872.

§ 1796. **RIGHTS OF BUYER UPON SALE WITHOUT RESERVE.** If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and, upon such a sale, bids by the seller, or any agent for him, are void.

History: Enacted March 21, 1872.

§ 1797. **BY BIDDING.** The employment by a seller of any person to bid at a sale by auction, without the knowledge of the buyer, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

History: Enacted March 21, 1872.

§ 1798. **AUCTIONEER'S MEMORANDUM OF SALE.** When property is sold by auction, an entry made by the auctioneer, in his sale book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves.

History: Enacted March 21, 1873; amended March 30, 1874, Code Amdts. 1873-4, p. 244.

TITLE II.

EXCHANGE.

§ 1804. Exchange, what.
§ 1805. Form of contract.
§ 1806. Parties have rights and obligations of sellers and buyers.
§ 1807. Warranty of money.

§ 1804. **EXCHANGE, WHAT.** Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

History: Enacted March 21, 1872.

§ 1805. **FORM OF CONTRACT.** The provisions of section seventeen hundred and thirty-nine apply to all exchanges in which the value of the thing to be given by either party is two hundred dollars or more.

History: Enacted March 21, 1872.

§ 1806. **PARTIES HAVE RIGHTS AND OBLIGATIONS OF SELLERS AND BUYERS.** The provisions of the title on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

History: Enacted March 21, 1872.

§ 1807. **WARRANTY OF MONEY.** On an exchange of money, each party thereby warrants the genuineness of the money given by him.

History: Enacted March 21, 1872.

TITLE III.

DEPOSIT.

Chapter I. Deposit in General, §§ 1813-1828.
II. Deposit for Keeping, §§ 1833-1872.
III. Deposit for Exchange, § 1878.

CHAPTER I.

DEPOSIT IN GENERAL

Article I. Nature and Creation of Deposit, §§ 1813-1818.
II. Obligations of the Depositary, §§ 1822-1828.

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

§ 1813. Deposit, kinds of.
§ 1814. Voluntary deposit, how made.
§ 1815. Involuntary deposit, how made.
§ 1816. Same. [Duty of involuntary depositary.]
§ 1817. Deposit for safe keeping, what.
§ 1818. Deposit for exchange, what.

§ 1813. **DEPOSIT, KINDS OF.** A deposit may be voluntary or involuntary; and for safe-keeping or for exchange.

History: Enacted March 21, 1872.

§ 1814. **VOLUNTARY DEPOSIT, HOW MADE.** A voluntary deposit is made by one giving to another, with

his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary.

History: Enacted March 21, 1872.

§ 1815. **INVOLUNTARY DEPOSIT, HOW MADE.** An involuntary deposit is made:

1. **By the accidental leaving or placing** of personal property in the possession of any person, without negligence on the part of its owner; or,

2. **In cases of fire, shipwreck, inundation, insurrection, riot,** or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

History: Enacted March 21, 1872.

§ 1816. **SAME. [DUTY OF INVOLUNTARY DEPOSITARY.]** The person with whom a thing is deposited in the manner described in the last section is bound to take charge of it, if able to do so.

History: Enacted March 21, 1872.

§ 1817. **DEPOSIT FOR SAFE KEEPING, WHAT.** A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

History: Enacted March 21, 1872.

§ 1818. **DEPOSIT FOR EXCHANGE, WHAT.** A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

History: Enacted March 21, 1872.

ARTICLE II.

OBLIGATIONS OF THE DEPOSITARY.

§ 1822. Depositary must deliver on demand.
§ 1823. No obligation to deliver without demand.
§ 1824. Place of delivery.
§ 1825. Notice to owner of adverse claim.
§ 1826. Notice to owner of thing wrongfully detained.
§ 1827. Delivery of thing owned jointly, etc.
§ 1828. Joint deposits by two or more persons.

§ 1822. DEPOSITARY MUST DELIVER ON DEMAND. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section eighteen hundred and twenty-five.

History: Enacted March 21, 1872.

§ 1823. NO OBLIGATION TO DELIVER WITHOUT DEMAND. A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

History: Enacted March 21, 1872.

§ 1824. PLACE OF DELIVERY. A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

History: Enacted March 21, 1872.

§ 1825. NOTICE TO OWNER OF ADVERSE CLAIM. A depositary must give prompt notice to the person for

whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him.

History: Enacted March 21, 1872.

§ 1826. **NOTICE TO OWNER OF THING WRONGFULLY DETAINED.** A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

History: Enacted March 21, 1872.

§ 1827. **DELIVERY OF THING OWNED JOINTLY, ETC.** If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

History: Enacted March 21, 1872.

§ 1828. **JOINT DEPOSITS BY TWO OR MORE PERSONS.** When a deposit is made in the name of two or more persons, deliverable or payable to either or to their survivor or survivors, such deposit or any part thereof, or increase thereof, may be delivered or paid to either of said persons or to the survivor or survivors in due course of business.

History: Enacted March 4, 1907, Stats. and Amdts. 1907, p. 92, Kerr's Stats. and Amdts. 1906-7, p. 426.

CHAPTER II.

DEPOSIT FOR KEEPING

Article I. General Provisions, §§ 1833-1840.
II. Gratuitous Deposit, §§ 1844-1847.
III. Storage, §§ 1851-1857.
IIIa. Warehousemen, §§-1858-1858f.
IV. Innkeepers, §§ 1859-1863.
V. Finding, §§ 1864-1872.

ARTICLE I.

GENERAL PROVISIONS.

§ 1833. Depositor must indemnify depositary.
§ 1834. Obligation of depositary of animals.
§ 1835. Obligations as to use of thing deposited.
§ 1836. Liability for damage arising from wrongful use.
§ 1837. Sale of thing in danger of perishing.
§ 1838. Injury to, or loss of thing deposited.
§ 1839. Service rendered by depositary.
§ 1840. Extent of his liability for negligence.

§ 1833. DEPOSITOR MUST INDEMNIFY DEPOSITARY. A depositor must indemnify the depositary:

1. **For all damage** caused to him by the defects or vices of the thing deposited; and,

2. **For all expenses** necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

History: Enacted March 21, 1872.

§ 1834. OBLIGATION OF DEPOSITARY OF ANIMALS. A depositary of living animals must provide them with suitable food and shelter, and treat them kindly.

History: Enacted March 21, 1872.

§ 1835. OBLIGATIONS AS TO USE OF THING DEPOSITED. A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

History: Enacted March 21, 1872.

§ 1836. LIABILITY FOR DAMAGE ARISING FROM WRONGFUL USE. A depositary is liable for any damage happening to the thing deposited, during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

History: Enacted March 21, 1872.

§ 1837. SALE OF THING IN DANGER OF PERISHING. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

History: Enacted March 21, 1872.

§ 1838. INJURY TO, OR LOSS OF THING DEPOSITED. If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or wilfully misrepre-

sents the circumstances to him, the depositary is presumed to have wilfully, or by gross negligence, permitted the loss or injury to occur.

History: Enacted March 21, 1872.

§ 1839. **SERVICE RENDERED BY DEPOSITARY.** So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the title on employment and service.

History: Enacted March 21, 1872.

§ 1840. **EXTENT OF HIS LIABILITY FOR NEGLIGENCE.** The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 244.

ARTICLE II.

GRATUITOUS DEPOSIT.

§ 1844. Gratuitous deposit, what.
§ 1845. Nature of involuntary deposit.
§ 1846. Degree of care required of gratuitous depositary.
§ 1847. His duties cease, when.

§ 1844. GRATUITOUS DEPOSIT, WHAT. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

History: Enacted March 21, 1872.

§ 1845. NATURE OF INVOLUNTARY DEPOSIT. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

History: Enacted March 21, 1872.

§ 1846. DEGREE OF CARE REQUIRED OF GRATUITOUS DEPOSITARY. A gratuitous depositary must use, at least, slight care for the preservation of the thing deposited.

History: Enacted March 21, 1872.

§ 1847. HIS DUTIES CEASE, WHEN. The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,

2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision two of section eighteen hundred and fifteen, cannot give such notice until the emergency which gave rise to the deposit is past.

History: Enacted March 21, 1872.

ARTICLE III.

STORAGE.

§ 1851. Deposit for hire.
§ 1852. Degree of care required of depositary for hire.
§ 1853. Rate of compensation for fraction of a week, etc.
§ 1854. Termination of deposit.
§ 1855. Same. [On payment of charges to become due.]
§ 1856. Lien for storage-charges [and money advanced].
§ 1857. Storage property to be sold.

§ 1851. DEPOSIT FOR HIRE. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

History: Enacted March 21, 1872.

§ 1852. DEGREE OF CARE REQUIRED OF DEPOSITARY FOR HIRE. A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

History: Enacted March 21, 1872.

§ 1853. RATE OF COMPENSATION FOR FRACTION OF A WEEK, ETC. In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

History: Enacted March 21, 1872.

§ 1854. TERMINATION OF DEPOSIT. In the absence of an agreement as to the length of time during which a de-

posit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

History: Enacted March 21, 1872.

§ 1855. SAME. [ON PAYMENT OF CHARGES TO BECOME DUE.] Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

History: Enacted March 21, 1872.

§ 1856. LIEN FOR STORAGE-CHARGES. [AND MONEY ADVANCED.] A depositary for hire has a lien for storage charges and for advances and insurance incurred at the request of the bailor, and for money necessarily expended in and about the care, preservation and keeping of the property stored, and he also has a lien for money advanced at the request of the bailor, to discharge a prior lien, and for the expenses of a sale where default has been made in satisfying a valid lien. The rights of the depositary for hire to such lien are regulated by the title on liens.

History: Enacted March 31, 1891, Stats. and Amdts. 1891, p. 470; amended April 19, 1909, Stats. and Amdts. 1909, p. 1001.

§ 1857. STORAGE PROPERTY TO BE SOLD. If from any cause other than want of ordinary care and diligence on his part, a depositary for hire is unable to deliver perishable property, baggage, or luggage received by him for storage, or to collect his charges for storage due thereon, he may cause such property to be sold, in open market, to satisfy his lien for storage; provided, that no property except perishable property shall be sold, under the provisions of this section, upon which storage charges shall not be due and unpaid for one year at the time of such sale.

History: Enacted March 31, 1891, Stats. and Amdts. 1891, p. 470.

[This article, including §§ 1858-1858f, was added by Code Commission as a part of article III, Act of March 16, 1901, Stats. and Amdts. 1900-1, pp. 409-411, held unconstitutional, see history, § 4 ante; Commissioner Davis procured a re-enactment of these sections—improperly designating them as "**Chapter** IIIa"—March 21, 1905, Stats. and Amdts. 1905, pp. 611-613.]

ARTICLE IIIa.

WAREHOUSEMEN.

§ 1858. Warehouse receipts, when must not be issued.
§ 1858a. Property not to be removed without consent in writing.
§ 1858b. Warehouse receipts, classification and effect of.
§ 1858c. Indorsement on negotiable receipt of property delivered.
§ 1858d. Non-negotiable receipts and their effect.
§ 1858e. Liability for loss by fire.
§ 1858f. Penalties and liabilities.

§ 1858. WAREHOUSE RECEIPTS, WHEN MUST NOT BE ISSUED. A warehouseman, wharfinger, or other person doing a storage business must not issue any receipt or voucher for any merchandise, grain, or other product or thing of value, to any person purporting to be the owner thereof, nor to any person as security for any indebtedness or for the performance of any obligation, unless such merchandise, grain, or other product, commodity, or thing has been, in good faith, received by such warehouseman, wharfinger, or other person, and is in his store or under his control at the time of issuing his receipt; nor must any second receipt for any such property be issued while a former receipt for any part thereof is outstanding and uncanceled.

History: Enacted March 21, 1905. See introductory note to article.

§ 1858a. PROPERTY NOT TO BE REMOVED WITHOUT CONSENT IN WRITING. No warehouseman, wharfinger, or other person must sell or encumber, ship, transfer, or remove beyond his immediate control any property for which a receipt has been given, without the consent in writing of the person holding such receipt plainly indorsed thereon in ink.

History: Enacted March 21, 1905. See introductory note to article.

§ 1858b. WAREHOUSE RECEIPTS, CLASSIFICATION AND EFFECT OF. Warehouse receipts for property stored are of two classes: first, transferable or negotiable; and second, non-transferable or non-negotiable. Under the first of these classes the property is transferable by indorsement of the party to whose order such receipt was issued, and such indorsement is a valid transfer of the property represented by the receipt, and may be in blank or to the order of another. All warehouse receipts must distinctly state on their face for what they are issued and its brands and distinguishing marks and the rate of storage per month or season, and, in the case of grain, the kind, the number of sacks, and pounds. If a receipt is not negotiable, it must have printed across its face, in red ink, in bold, distinct letters, the word "Non-negotiable."

History: Enacted March 21, 1905. See introductory note to article.

§ 1858c. INDORSEMENT ON NEGOTIABLE RECEIPT OF PROPERTY DELIVERED. If a negotiable receipt is issued for any property, neither the person issuing it nor any other person into whose care or control the property comes must deliver any part thereof without indorsing on the back of the receipt, in ink, the amount and date of the delivery; nor can he be allowed to make any off-

set, claim, or demand other than is expressed on the face of the receipt, when called upon to deliver any property for which it was issued.

History: Enacted March 21, 1905. See introductory note to article.

§ 1858d. **NON-NEGOTIABLE RECEIPTS AND THEIR EFFECT.** If a non-negotiable receipt is issued for any property, neither the person issuing nor any other person in whose care or control the property comes must deliver any part thereof, except upon the written order of the person to whom the receipt was issued.

History: Enacted March 21, 1905. See introductory note to article.

§ 1858e. **LIABILITY FOR LOSS BY FIRE.** No warehouseman or other person doing a general storage business is responsible for any loss or damage to property by fire while in his custody, if he exercises reasonable care and diligence for its protection and preservation.

History: Enacted March 21, 1905. See introductory note to article.

§ 1858f. **PENALTIES AND LIABILITIES.** Every warehouseman, wharfinger, or other person who violates any of the provisions of sections eighteen hundred and fifty-eight to eighteen hundred and fifty-eight **e**, inclusive, is guilty of a felony, and, upon conviction thereof, may be fined in a sum not exceeding five thousand dollars, or imprisoned in the state prison not exceeding five years, or both. He is also liable to any person aggrieved by such violation for all damages, immediate or consequent, which he may have sustained therefrom, which damages may be recovered by a civil action in any court of competent jurisdiction, whether the offender has been convicted or not.

History: Enacted March 21, 1905. See introductory note to article.

ARTICLE IV.

INNKEEPERS.

§ 1859. Innkeeper's liability.
§ 1860. How exempted from liability.
§ 1861. Lien for charges on baggage.
§ 1862. Unclaimed baggage may be sold at auction; notice of.
§ 1863. Keepers to post rates of charges.

§ 1859. INNKEEPER'S LIABILITY. The liability of an innkeeper, hotel keeper, boarding-house and lodging-house keeper, for losses of or injuries to personal property, other than money, placed by his guests, boarders, or lodgers under his care, is that of a depositary for hire;

[Amount of liability.] Provided, however, that in no case shall such liability exceed the sum of one hundred dollars for each trunk and its contents, fifty dollars for each valise or traveling-bag and contents, and ten dollars for each box, bundle or package and contents, so placed under his care, unless he shall have consented in writing with the owner thereof to assume a greater liability.

History: Enacted March 21, 1872; amended March 12, 1895. Stats. and Amdts. 1895, p. 49.

§ 1860. HOW EXEMPTED FROM LIABILITY. If an innkeeper, hotel keeper, boarding-house or lodging-house keeper, keeps a fire-proof safe, and gives notice to a guest, boarder, or lodger, either personally or by putting up a printed notice in a prominent place in the office or the room occupied by the guest, boarder, or lodger, that he keeps such a safe and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts shall contribute, thereto, for any loss of or injury to such

articles, if not deposited with him to be placed therein, nor in any case more than the sum of two hundred and fifty dollars for any or all such property of any individual guest, boarder, or lodger, unless he shall have given a receipt in writing therefor to such guest, boarder, or lodger.

History: Enacted March 21, 1872; amended March 12, 1895. Stats. and Amdts. 1895, p. 50.

§ 1861. **LIEN FOR CHARGES ON BAGGAGE.** Hotel, inn, boarding-house and lodging-house keepers shall have a lien upon the baggage and other property belonging to or legally under the control of their guests, or boarders, or lodgers which may be in such hotel, inn, or boarding or lodging-house for the proper charges due from such guests, or boarders, or lodgers, for their accommodation, board and lodging and room rent, and such extras as are furnished at their request, and for all money paid for or advanced to such guests, or boarders or lodgers, and for the cost of enforcing such lien, with the right to the possession of such baggage and other property until such charges and moneys are paid;

[May sell baggage.] and unless such charges and moneys shall be paid within sixty days from the time when the same become due, said hotel, inn, boarding-house or lodging-house keeper may sell said baggage and property at public auction to the highest bidder, after giving notice of such sale by publication of a notice containing the name of the debtor, the amount due, a brief description of the property to be sold, and the time and place of such sale, once every week for four successive weeks prior to the day of sale, in a newspaper of general circulation in the county in which said hotel, inn, boarding-house or lodging-house is situated and also by mailing, at least fifteen days before such sale, a copy of such notice addressed to such guest, boarder or lodger at his post office address, if known, and if not known, such notice shall be addressed to such guest, boarder or lodger at the place where such hotel, inn, boarding-house or lodging-house is situated;

[Residue.] and after satisfying such lien out of the proceeds of such sale together with any reasonable costs that may have been incurred in enforcing said lien, the residue of said proceeds of sale, if any, shall upon demand made within six months after such sale, be paid by said hotel, inn, boarding-house, or lodging-house keeper to such guest, boarder or lodger; and if not demanded within six months from the date of such sale, such residue shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county; and such sale shall be a perpetual bar to any action against said hotel, inn, boarding-house or lodging-house kepeer for the recovery of such baggage or property or of the value thereof, or for any damages growing out of the failure of such guest, boarder or lodger to receive such baggage or property;

[Baggage not belonging to guest.] provided, however, that is any baggage or property becoming subject to the lien herein provided for does not belong to the guest, lodger or boarder who incurred the charges or indebtedness secured thereby, at the time when such charges or indebtedness was incurred, and if the hotel, inn, boarding or lodging-house keeper entitled to such lien receives notice of such fact at any time before the sale of such baggage or property hereunder, then, and in that event, such baggage and property which is subject to said lien and did not belong to said guest, boarder or lodger at the time when such charges or indebtedness was incurred shall not be subject to sale in the manner hereinbefore provided, but such baggage and property may be sold in the manner provided by the Code of Civil Procedure for the sale of property under a writ of execution, to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness.

History: Enacted April 1, 1876, Code Amdts. 1875-6, p. 78; amended June 7, 1915, Stats. and Amdts. 1915, p. 1285. **In effect** August 8, 1915.

§ 1862. UNCLAIMED BAGGAGE MAY BE SOLD AT AUCTION; NOTICE OF. Whenever any trunk, carpet-bag, valise, box, bundle, or other baggage has heretofore come, or shall hereafter come into the possession of the keeper of any hotel, inn, boarding or lodging house, as such, and has remained or shall remain unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such sale may retain the charges for storage, if any, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village, or place in which said hotel, inn, boarding or lodging house is situated. Said notice shall be published once a week, for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpet-bag, valise, box, bundle, or other baggage, as near as may be; the name of the owner, if known; the name of such keeper, and the time and place of sale; and the expenses incurred for advertising shall be a lien upon such trunk, carpet-bag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property, or thing, or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county.

History: Enacted April 1, 1876, Code Amdts. 1875-6, p. 78.

§ 1863. KEEPERS TO POST RATES OF CHARGES. Every keeper of a hotel, inn, boarding or lodging house, shall post in [a] conspicuous place in the office or public room, and in every bedroom of said hotel, boarding-house, inn, or

lodging-house, a printed copy of this section, and a statement of charge or rate of charges by the day, and for meals or items furnished, and for lodging. No charge or sum shall be collected or received by any such person for any service not actually rendered, or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding or lodging house. For any violation of this section, or any provision herein contained, the offender shall forfeit to the injured party three times the amount of the sum charged in excess of what he is entitled to.

History: Enacted April 1, 1876, Code Amdts. 1875-6, p. 79; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 411, held unconstitutional, see history, § 4 ante.

ARTICLE V.

FINDING.

§ 1864. Obligation of finder.
§ 1865. Finder to notify owner. Duty where owner not known.
§ 1866. Claimant to prove ownership.
§ 1867. Reward, etc., to finder.
§ 1868. Finder may put thing found on storage.
§ 1869. When finder may sell the thing found.
§ 1870. How sale is to be made.
§ 1871. Property vests in finder, when. Publication in certain cases. Liability of finder to owner.
§ 1872. Thing abandoned.

§ 1864. OBLIGATION OF FINDER. One who finds a thing lost is not bound to take charge of it, but if he does so he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

History: Enacted March 21, 1872.

§ 1865. FINDER TO NOTIFY OWNER. DUTY WHERE OWNER NOT KNOWN. If the finder of a thing, other than a domestic animal, takes possession thereof, or if a person saves any such animal from drowning or starvation, he must, within a reasonable time, inform the owner thereof, if known, and make restitution to him upon demand, without compensation, except a reasonable charge for saving and caring therefor. If the owner is not known to such finder or saver, he must, within five days, file an affidavit with the justice of the peace of the county whose office is nearest to the place of such finding or saving, particularly describing the property and the time, place, and circumstances under which it was found or saved. Such justice must then summon three disinterested persons to appraise the property. They, or a majority of them, must make two

lists of the valuation and description of the property, by them verified, and deliver one of such lists to the justice of the peace, to be kept by him on file in his office, and the other list must be delivered to such finder or saver, who must, within five days thereafter, cause it to be filed for record in the office of the county recorder of the county, who must record it in a book known as the "Estray and Lost Property Book."

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 411, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 613.

§ 1866. **CLAIMANT TO PROVE OWNERSHIP.** The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

History: Enacted March 21, 1872.

§ 1867. **REWARD, ETC., TO FINDER.** The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

History: Enacted March 21, 1872.

§ 1868. **FINDER MAY PUT THING FOUND ON STORAGE.** The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character, at a reasonable expense.

History: Enacted March 21, 1872.

§ 1869. **WHEN FINDER MAY SELL THE THING FOUND.** The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner can-

not, with reasonable diligence be found, or, being found, refuses upon demand to pay the lawful charges of the finder in the following cases:

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,

2. When the lawful charges of the finder amount to two thirds of its value.

History: Enacted March 21, 1872.

§ 1870. **HOW SALE IS TO BE MADE.** A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

History: Enacted March 21, 1872.

§ 1871. **PROPERTY VESTS IN FINDER, WHEN. PUBLICATION IN CERTAIN CASES. LIABILITY OF FINDER TO OWNER.** If no owner appears within six months after such finding or saving and offers reasonable proof of his ownership, and compensates, or in good faith offers to compensate, the finder or saver for the expense necessarily incurred by him, then such property vests in such finder or saver, unless it is of greater value than twenty dollars. If of such greater value, he must publish a copy of such verified list for three successive weeks in some newspaper of general circulation published in the county, and if the owner does not, within one year after the completion of such publication, prove the property and pay, or in good faith offer to pay, all charges thereon, the title thereto vests in such finder or saver. If the finder or saver of property does not comply with the provisions of section eighteen hundred and sixty-five, or if, though he does so comply, he refuses to surrender the property to an owner who has made reasonable proof of ownership, and paid, or in good faith offered to pay, all legal charges thereon, he is liable to the

owner for double the value of the property, and the owner may exonerate himself from all liability arising out of such property by surrendering, or offering to surrender, it in satisfaction thereof.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 412, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 614.

§ 1872. **THING ABANDONED.** The provisions of this article have no application to things which have been intentionally abandoned by their owners.

History: Enacted March 21, 1872.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

§ 1878. Relations of the parties.

§ 1878. RELATIONS OF THE PARTIES. A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

History: Enacted March 21, 1872.

TITLE IV.

LOAN

Chapter I. Loan for Use, §§ 1884-1896
II. Loan for Exchange, §§ 1902-1906.
III. Loan of Money, §§ 1912-1920.

CHAPTER I.

LOAN FOR USE.

§ 1884. Loan, what.
§ 1885. Title to property lent.
§ 1886. Care required of borrower.
§ 1887. Same. [Of animal for use.]
§ 1888. Degree of skill.
§ 1889. Borrower, when to repair injuries.
§ 1890. Use of thing lent.
§ 1891. Relending forbidden.
§ 1892. Borrower, when to bear expenses.

§ 1893. Lender liable for defects.
§ 1894. Lender may require return of thing lent.
§ 1895. When returnable without demand.
§ 1896. Place of return.

§ 1884. LOAN, WHAT. A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

History: Enacted March 21, 1872.

§ 1885. TITLE TO PROPERTY LENT. A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

History: Enacted March 21, 1872.

§ 1886. CARE REQUIRED OF BORROWER. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

History: Enacted March 21, 1872.

§ 1887. SAME. [OF ANIMAL FOR USE.] One who borrows a living animal for use, must treat it with great kindness, and provide everything necessary and suitable for it.

History: Enacted March 21, 1872.

§ 1888. DEGREE OF SKILL. A borrower for use is bound to have and to exercise such skill in the care of the thing lent as causes the lender to believe him to possess.

History: Enacted March 21, 1872.

§ 1889. BORROWER, WHEN TO REPAIR INJURIES. A borrower for use must repair all deteriorations or injuries

to the thing lent, which are occasioned by his negligence, however slight.

History: Enacted March 21, 1872.

§ 1890. **USE OF THING LENT.** The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

History: Enacted March 21, 1872.

§ 1891. **RELENDING FORBIDDEN.** The borrower of a thing for use must not part with it to a third person, without the consent of the lender.

History: Enacted March 21, 1872.

§ 1892. **BORROWER, WHEN TO BEAR EXPENSES.** The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

History: Enacted March 21, 1872.

§ 1893. **LENDER LIABLE FOR DEFECTS.** The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

History: Enacted March 21, 1872.

§ 1894. **LENDER MAY REQUIRE RETURN OF THING LENT.** The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement,

the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

History: Enacted March 21, 1872.

§ 1895. **WHEN RETURNABLE WITHOUT DEMAND.** If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

History: Enacted March 21, 1872.

§ 1896. **PLACE OF RETURN.** The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

History: Enacted March 21, 1872.

CHAPTER II.

LOAN FOR EXCHANGE.

§ 1902. Loan for exchange, what.
§ 1903. Same. [Optional loan.]
§ 1904. Title to property lent.
§ 1905. Contract cannot be modified by lender.
§ 1906. Certain sections applicable.

§ 1902. LOAN FOR EXCHANGE, WHAT. A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

History: Enacted March 21, 1872.

§ 1903. SAME. [OPTIONAL LOAN.] A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter.

History: Enacted March 21, 1872.

§ 1904. TITLE TO PROPERTY LENT. By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

History: Enacted March 21, 1872.

§ 1905. CONTRACT CANNOT BE MODIFIED BY LENDER. A lender for exchange cannot require the borrower to fulfil his obligations at a time, or in a manner, different from that which was originally agreed upon.

History: Enacted March 21, 1872.

§ 1906. **CERTAIN SECTIONS APPLICABLE.** Sections eighteen hundred and ninety-three, eighteen hundred and ninety-five, and eighteen hundred and ninety-six, apply to a loan for exchange.

History: Enacted March 21, 1872.

CHAPTER III.

LOAN OF MONEY.

[Commissioners' note.—"Originally no interest was allowed upon a loan of money; but with the progress of business it became necessary, and the transaction thus entered into, although in strictness a hiring, is universally known as a loan. This use of the word having obtained so long, it would be idle to attempt to change it."]

§ 1912. Loan of money. [What is.]
§ 1913. Loan to be repaid in current money.
§ 1914. Interest on loan.
§ 1915. Interest, what.
§ 1916. Annual rate.
§ 1917. Legal interest.
§ 1918. Same. [By agreement, any rate.]
§ 1919. Interest becomes part of principal, when.
§ 1920. Interest on judgment.

§ 1912. LOAN OF MONEY. [WHAT IS.] A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on loan for use.

History: Enacted March 21, 1872.

§ 1913. LOAN TO BE REPAID IN CURRENT MONEY. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

History: Enacted March 21, 1872.

§ 1914. **INTEREST ON LOAN.** Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 245.

§ 1915. **INTEREST, WHAT.** Interest is the compensation allowed by law or fixed by the parties for the use, or forbearance, or detention of money.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 245.

§ 1916. **ANNUAL RATE.** When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

History: Enacted March 21, 1872.

§ 1917. **LEGAL INTEREST.** Unless there is an express contract in writing, fixing a different rate, interest is payable on all moneys at the rate of seven per centum per annum after they become due, on any instrument of writing, except a judgment, and on moneys lent, or due on any settlement of account, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period less than a year, three hundred and sixty days are deemed to constitute a year.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 245; February 5, 1878, Code Amdts. 1877-8, p. 87.

§ 1918. **SAME. [BY AGREEMENT, ANY RATE.]** Parties may agree in writing for the payment of any rate of

interest, and it shall be allowed, according to the terms of the agreement, until the entry of judgment.

History: Enacted March 21, 1872.

§ 1919. **INTEREST BECOMES PART OF PRINCIPAL, WHEN.** The parties may, in any contract in writing whereby any debt is secured to be paid, agree that if the interest on such debt is not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

History: Enacted March 21, 1872.

§ 1920. **INTEREST ON JUDGMENT.** Interest is payable on judgments recovered in the courts of this state, at the rate of seven per cent per annum, and no greater rate, but such interest must not be compounded in any manner or form.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 245.

TITLE V.

HIRING

Chapter I. Hiring in General, §§ 1925-1935.
II. Hiring of Real Property, §§ 1941-1950.
III. Hiring of Personal Property, §§ 1955-1959.

CHAPTER I.

HIRING IN GENERAL.

§ 1925. Hiring, what.
§ 1926. Products of thing.
§ 1927. Quiet possession.
§ 1928. Degree of care, etc., on part of hirer.
§ 1929. Must repair injuries, etc.
§ 1930. Thing let for a particular purpose.
§ 1931. When letter may terminate the hiring.
§ 1932. When hirer may terminate the hiring.
§ 1933. When hiring terminates.
§ 1934. When terminated by death, etc., of party.
§ 1935. Apportionment of hire.

§ 1925. **HIRING, WHAT.** Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

History: Enacted March 21, 1872.

§ 1926. **PRODUCTS OF THING.** The products of a thing hired, during the hiring, belong to the hirer.

History: Enacted March 21, 1872.

§ 1927. **QUIET POSSESSION.** An agreement to let upon hire binds the letter to secure to the hirer the quiet pos-

session of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

History: Enacted March 21, 1872.

§ 1928. **DEGREE OF CARE, ETC., ON PART OF HIRER.** The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

History: Enacted March 21, 1872.

§ 1929. **MUST REPAIR INJURIES, ETC.** The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his want of ordinary care.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 412, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 61.

§ 1930. **THING LET FOR A PARTICULAR PURPOSE.** When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, he is liable to the letter for all damages resulting from such use, or the letter may treat the contract as thereby rescinded.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 412, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 614.

§ 1931. **WHEN LETTER MAY TERMINATE THE HIRING.** The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

History: Enacted March 21, 1872.

§ 1932. **WHEN HIRER MAY TERMINATE THE HIRING.** The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfil his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 412, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 614.

§ 1933. **WHEN HIRING TERMINATES.** The hiring of a thing terminates:

1. At the end of the term agreed upon;

2. By the mutual consent of the parties;

3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,

4. By the destruction of the thing hired.

History: Enacted March 21, 1872.

§ 1934. **WHEN TERMINATED BY DEATH, ETC., OF PARTY.** If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

History: Enacted March 21, 1872.

§ 1935. **APPORTIONMENT OF HIRE.** When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

History: Enacted March 21, 1872.

CHAPTER II.

HIRING OF REAL PROPERTY.

§ 1941. Lessor to make dwelling-house fit for its purpose.
§ 1942. Lessee may make repairs, etc.
§ 1943. Term of hiring when no limit is fixed.
§ 1944. Hiring of lodgings for indefinite term.
§ 1945. Renewal of lease by lessee's continued possession.
§ 1946. Notice to quit.
§ 1947. Rent, when payable.
§ 1948. Attornment of a tenant to a stranger.
§ 1949. Tenant must deliver notice served on him.
§ 1950. Letting parts of rooms forbidden.

§ 1941. **LESSOR TO MAKE DWELLING-HOUSE FIT FOR ITS PURPOSE.** The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenantable, except such as are mentioned in section nineteen hundred and twenty-nine.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 245, 246, by inserting the words "in absence of any agreement to the contrary."—Van Every vs. Ogg, 59 Cal. 563, 566.

§ 1942. **LESSEE MAY MAKE REPAIRS, ETC.** If within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the cost of such repairs do not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.

History: Enacted March 21, 1872; amended March 30, 1874. Code Amdts. 1873-4, p. 246.

This section as originally enacted provided that lessee might make repairs himself "and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor," without providing, as it was made to read by amendment in 1874, that "where the costs of such repairs do not require an expenditure greater than one month's rent of the premises," etc., to the end of the section as it now reads.—Van Every vs. Ogg, 59 Cal. 563, 566.

§ 1943. **TERM OF HIRING WHEN NO LIMIT IS FIXED.** A hiring of real property, other than lodgings and dwelling-houses, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

History: Enacted March 21, 1872.

§ 1944. **HIRING OF LODGINGS FOR INDEFINITE TERM.** A hiring of lodgings or a dwelling-house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

History: Enacted March 21, 1872.

§ 1945. **RENEWAL OF LEASE BY LESSEE'S CONTINUED POSSESSION.** If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.

History: Enacted March 21, 1872, founded upon § 6 Act 1863. —Stoppelkamp vs. Mangeot, 42 Cal. 316, 323.

§ 1946. **NOTICE TO QUIT.** A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

History: Enacted March 21, 1872.

§ 1947. **RENT, WHEN PAYABLE.** When there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

History: Enacted March 21, 1872.

§ 1948. **ATTORNMENT OF A TENANT TO A STRANGER.** The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction.

History: Enacted March 21, 1872; founded upon Stats. 1855, p. 171, § 7.

§ 1949. **TENANT MUST DELIVER NOTICE SERVED ON HIM.** Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him [if] in writing.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 246.

§ 1950. LETTING PARTS OF ROOMS FORBIDDEN. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues.

History: Enacted March 21, 1872.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

§ 1955. Obligations of letter of personal property.
§ 1956. Ordinary expenses.
§ 1957. Extraordinary expenses.
§ 1958. Return of thing hired.
§ 1959. Charter party, what.

§ 1955. OBLIGATIONS OF LETTER OF PERSONAL PROPERTY. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use.

History: Enacted March 21, 1872.

§ 1956. ORDINARY EXPENSES. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

History: Enacted March 21, 1872.

§ 1957. EXTRAORDINARY EXPENSES. If a letter fails to fulfil his obligations, as prescribed by section nineteen hundred and fifty-five, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

History: Enacted March 21, 1872.

§ 1958. **RETURN OF THING HIRED.** At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time.

History: Enacted March 21, 1872.

§ 1959. **CHARTER PARTY, WHAT.** The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or a part owner may be a charterer.

History: Enacted March 21, 1872.

TITLE VI.

SERVICE.

Chapter I. Service With Employment, §§ 1965-2003.
II. Particular Employments, §§ 2009-2072.
III. Service Without Employment, §§ 2078, 2079.

CHAPTER I.

SERVICE WITH EMPLOYMENT.

Article I. Definition of Employment, § 1965.
II. Obligations of the Employer, §§ 1969-1971.
III. Obligations of the Employee, §§ 1975-1992.
IV. Termination of Employment, §§ 1996-2003.

ARTICLE I.

DEFINITION OF EMPLOYMENT.

§ 1965. Employment, what.

§ 1965. EMPLOYMENT, WHAT. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer, or of a third person.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 412, held unconstitutional, see history, § 4 ante.

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

§ 1969. When employer must indemnify employee.
§ 1970. When not [bound to indemnify employee].
§ 1971. Employer to indemnify for his own negligence.

§ 1969. WHEN EMPLOYER MUST INDEMNIFY EMPLOYEE. An employer must indemnify his employee, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

History: Enacted March 21, 1872.

§ 1970. WHEN NOT [BOUND TO INDEMNIFY EMPLOYEE.] An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless the negligence causing the injury was committed in the performance of a duty the employer owes by law to the employee, or unless the employer has neglected to use ordinary care in the selection of the culpable employee; provided, nevertheless, that the employer shall be liable for such injury when the same results from the wrongful act, neglect or default of any agent or officer of such employer, superior to the employee injured, or of a person employed by such employer having the right to control or direct the services of such employee injured, and also when such injury results from the wrongful act, neglect or default of a co-employee

engaged in another department of labor from that of the employee injured, or employed upon a machine, railroad train, switch signal point, locomotive engine, or other appliance than that upon which the employee is injured is employed, or who is charged with dispatching trains, or transmitting telegraphic or telephonic orders upon any railroad, or in the operation of any mine, factory, machine shop, or other industrial establishment.

Knowledge by an employee injured of the defective or unsafe character or condition of any machinery, ways, appliances or structures of such employer shall not be a bar to recovery for any injury or death caused thereby, unless it shall also appear that such employee fully understood, comprehended and appreciated the dangers incident to the use of such defective machinery, ways, appliances or structure, and thereafter consented to use the same, or continued in the use thereof.

[Right of action for death of employee.] When death, whether instantaneous or otherwise, results from an injury to an employee received as aforesaid, the personal representative of such employee shall have a right of action therefor against such employer, and may recover damages in respect thereof, for and on behalf, and for the benefit of the widow, children, dependent parents, and dependent brothers and sisters, in order of precedence as herein stated, but no more than one action shall be brought for such recovery.

[Benefits of this section may not be waived.] Any contract or agreement, express or implied, made by any such employee to waive the benefits of this section, or any part thereof, shall be null and void, and this section shall not be construed to deprive any such employee or his personal representative, of any right or remedy to which he is now entitled under the laws of this state.

[Contributory negligence.] The rules and principles of law as to contributory negligence which apply to other cases

shall apply to cases arising under this section, except in so far as the same are herein modified or changed.

History: Enacted March 21, 1872; amended March 20, 1903, Stats. and Amdts. 1903, p. 256; amended March 6, 1907, Stats. and Amdts. 1907, p. 119, Kerr's Stats. and Amdts. 1906-7, p. 426. **In effect** from and after passage.

§ 1971. **EMPLOYER TO INDEMNIFY FOR HIS OWN NEGLIGENCE.** An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

History: Enacted March 21, 1872.

ARTICLE III.

OBLIGATIONS OF THE EMPLOYEE.

§ 1975. Duties of gratuitous employee.
§ 1976. Same. [By special request.]
§ 1977. Same. [Under written power of attorney.]
§ 1978. Duties of employee for reward.
§ 1979. Duties of employee for his own benefit.
§ 1980. Contracts for service limited to two years.
§ 1981. Employee must obey employer.
§ 1982. Employee to conform to usage.
§ 1983. Degree of skill required.
§ 1984. Must use what skill he has.
§ 1985. What belongs to employer.
§ 1986. Duty to account.
§ 1987. Employee not bound to deliver without demand.
§ 1988. Preference to be given to employers.
§ 1989. Responsibility of employee for substitute.
§ 1990. Responsibility for negligence.
§ 1991. Surviving employee.
§ 1992. Confidential employment.

§ 1975. DUTIES OF GRATUITOUS EMPLOYEE. One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

History: Enacted March 21, 1872.

§ 1976. SAME. [BY SPECIAL REQUEST.] One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

History: Enacted March 21, 1872.

§ 1977. SAME. [UNDER WRITTEN POWER OF ATTORNEY.] A gratuitous employee, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

History: Enacted March 21, 1872.

§ 1978. DUTIES OF EMPLOYEE FOR REWARD. One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

History: Enacted March 21, 1872.

§ 1979. DUTIES OF EMPLOYEE FOR HIS OWN BENEFIT. One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

History: Enacted March 21, 1872.

§ 1980. CONTRACTS FOR SERVICE LIMITED TO TWO YEARS. A contract to render personal service, other than a contract of apprenticeship, as provided in the chapter on master and servant, cannot be enforced against the employee beyond the term of two years from the commencement of service under it; but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 413, held unconstitutional, see history, § 4 ante.

§ 1981. EMPLOYEE MUST OBEY EMPLOYER. An employee must substantially comply with all the directions

of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 246.

§ 1982. EMPLOYEE TO CONFORM TO USAGE. An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

History: Enacted March 21, 1872.

§ 1983. DEGREE OF SKILL REQUIRED. An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

History: Enacted March 21, 1872.

§ 1984. MUST USE WHAT SKILL HE HAS. An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 247.

§ 1985. WHAT BELONGS TO EMPLOYER. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

History: Enacted March 21, 1872.

§ 1986. **DUTY TO ACCOUNT.** An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

History: Enacted March 21, 1872.

§ 1987. **EMPLOYEE NOT BOUND TO DELIVER WITHOUT DEMAND.** An employee who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

History: Enacted March 21, 1872.

§ 1988. **PREFERENCE TO BE GIVEN TO EMPLOYERS.** An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 247.

§ 1989. **RESPONSIBILITY OF EMPLOYEE FOR SUBSTITUTE.** An employe who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

History: Enacted March 21, 1872.

§ 1990. **RESPONSIBILITY FOR NEGLIGENCE.** An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the

latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 413, held unconstitutional, see history, § 4 ante.

§1991. **SURVIVING EMPLOYEE.** Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

History: Enacted March 21, 1872.

§1992. **CONFIDENTIAL EMPLOYMENT.** The obligations peculiar to confidential employments are defined in the title on trusts.

History: Enacted March 21, 1872.

ARTICLE IV.

TERMINATION OF EMPLOYMENT.

§ 1996. Termination by death, etc., of employer.
§ 1997. Employment, how terminated.
§ 1998. Continuance of service in certain cases.
§ 1999. Termination at will.
§ 2000. Termination by employer for fault.
§ 2001. Termination by employee for fault.
§ 2002. Compensation of employee dismissed for cause.
§ 2003. Compensation of employee leaving for cause.

§ 1996. **TERMINATION BY DEATH, ETC., OF EMPLOYER.** Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 413, held unconstitutional, see history, § 4 ante.

§ 1997. **EMPLOYMENT, HOW TERMINATED.** Every employment is terminated:

1. By the expiration of its appointed term;
2. By the extinction of its subject;
3. By the death of the employee; or,
4. By his legal incapacity to act as such.

History: Enacted March 21, 1872.

§ 1998. **CONTINUANCE OF SERVICE IN CERTAIN CASES.** An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the

death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

History: Enacted March 21, 1872.

§ 1999. TERMINATION AT WILL. An employment, having no specified term, may be terminated at the will of either party, on notice to the other. Employment for a specified term shall mean an employment for a period greater than one month.

History: Enacted March 21, 1872; amended May 21, 1915, Stats. and Amdts. 1915, p. 720. **In effect** August 8, 1915.

§ 2000. TERMINATION BY EMPLOYER FOR FAULT. An employment, for a specified term, may be terminated at any time by the employer, in case of any wilful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

History: Enacted March 21, 1872; amended May 21, 1915, Stats. and Amdts. 1915, p. 720. **In effect** August 8, 1915.

§ 2001. TERMINATION BY EMPLOYEE FOR FAULT. An employment, for a specified term, may be terminated by the employee at any time, in case of any wilful or permanent breach of the obligations of his employer to him as an employee.

History: Enacted March 21, 1872; amended May 21, 1915, Stats. and Amdts. 1915, p. 720. **In effect** August 8, 1915.

§ 2002. **COMPENSATION OF EMPLOYEE DISMISSED FOR CAUSE.** An employee who is not employed for a specified term, dismissed by his employer, is entitled to compensation for services rendered up to the time of such dismissal.

History: Enacted March 21, 1872; amended May 21, 1915, Stats. and Amdts. 1915, p. 720. **In effect** August 8, 1915.

§ 2003. **COMPENSATION OF EMPLOYEE LEAVING FOR CAUSE.** An employee who is not employed for a specified term and who quits the service of his employer, is entitled to compensation for services rendered up to the time of such quitting.

History: Enacted March 21, 1872; amended May 21, 1915, Stats. and Amdts. 1915, p. 720. **In effect** August 8, 1915.

CHAPTER II.

PARTICULAR EMPLOYMENT.

Article I. Master and Servant, §§ 2009-2015.
II. Agents, §§ 2019-2022.
III. Factors, §§ 2026-2030.
IV. Shipmasters, §§ 2034-2044.
V. Mates and Seamen, §§ 2048-2066.
VI. Ship's managers, §§ 2070-2072.

ARTICLE I.

MASTER AND SERVANT.

§ 2009. Servant, what.
§ 2010. Term of hiring.
§ 2011. Same. [Presumed to be monthly, when.]
§ 2012. Renewal of hiring.
§ 2013. Time of service.
§ 2014. Servant to pay over without demand.
§ 2015. When servant may be discharged.

§ 2009. **SERVANT, WHAT.** A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

History: Enacted March 21, 1872.

§ 2010. **TERM OF HIRING.** A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is

presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piecework, for no specified term.

History: Enacted March 21, 1872.

§ 2011. **SAME. [PRESUMED TO BE MONTHLY, WHEN.]** In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

History: Enacted March 21, 1872.

§ 2012. **RENEWAL OF HIRING.** Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

History: Enacted March 21, 1872.

§ 2013. **TIME OF SERVICE.** The entire time of a domestic servant belongs to the master; and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

History: Enacted March 21, 1872.

§ 2014. **SERVANT TO PAY OVER WITHOUT DEMAND.** A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound, without orders from his master, to send anything to him through another person.

History: Enacted March 21, 1872.

§ 2015. WHEN SERVANT MAY BE DISCHARGED. A master may discharge any servant, other than an apprentice whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

History: Enacted March 21, 1872.

ARTICLE II.

AGENTS.

§ 2019. Agent to conform to his authority.
§ 2020. Must keep his principal informed.
§ 2021. Collecting agent.
§ 2022. Responsibility of sub-agent.

§ 2019. AGENT TO CONFORM TO HIS AUTHORITY. An agent must not exceed the limits of his actual authority, as defined by the title on agency.

History: Enacted March 21, 1872.

§ 2020. MUST KEEP HIS PRINCIPAL INFORMED. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

History: Enacted March 21, 1872.

§ 2021. COLLECTING AGENT. An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

History: Enacted March 21, 1872.

§ 2022. RESPONSIBILITY OF SUB-AGENT. A mere agent of an agent is not responsible as such to the principal of the latter.

History: Enacted March 21, 1872.

ARTICLE III.

FACTORS.

§ 2026. Factor, what.
§ 2027. Obedience required from factor.
§ 2028. Sales on credit.
§ 2029. Liability of factor under guaranty commission.
§ 2030. Factor cannot relieve himself from liability.

§ 2026. FACTOR, WHAT. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

History: Enacted March 21, 1872.

§ 2027. OBEDIENCE REQUIRED FROM FACTOR. A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

History: Enacted March 21, 1872.

§ 2028. SALES ON CREDIT. A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the term of credit, may not extend it.

History: Enacted March 21, 1872.

§ 2029. **LIABILITY OF FACTOR UNDER GUARANTY COMMISSION.** A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

History: Enacted March 21, 1872.

§ 2030. **FACTOR CANNOT RELIEVE HIMSELF FROM LIABILITY.** A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal.

History: Enacted March 21, 1872.

ARTICLE IV.

SHIPMASTERS.

§ 2034. Appointment of master.
§ 2035. When must be on board.
§ 2036. Pilotage.
§ 2037. Power of master over seamen.
§ 2038. Power of master over passengers.
§ 2039. Impressing private stores.
§ 2040. When may abandon the ship.
§ 2041. Duties on abandonment.
§ 2042. When master cannot trade on his own account.
§ 2043. Care and diligence.
§ 2044. Authority of master.

§ 2034. **APPOINTMENT OF MASTER.** The master of a ship is appointed by the owner, and holds during his pleasure.

History: Enacted March 21, 1872.

§ 2035. **WHEN MUST BE ON BOARD.** The master of a ship is bound to be always on board when entering or leaving a port, harbor, or river.

History: Enacted March 21, 1872, founded upon Code de Com. art. 227.

§ 2036. **PILOTAGE.** On entering or leaving a port, harbor, or river, the master of a ship must take a pilot if one offers himself, and while the pilot is on board the navigation of the ship devolves on him.

History: Enacted March 21, 1872.

§ 2037. **POWER OF MASTER OVER SEAMEN.** The master of a ship may enforce the obedience of the mate and

seamen to his lawful commands by confinement and other reasonable corporal punishment, not prohibited by acts of Congress, being responsible for the abuse of his power.

History: Enacted March 21, 1872.

§ 2038. **POWER OF MASTER OVER PASSENGERS.** The master of a ship may confine any person on board, during a voyage, for wilful disobedience to his lawful commands.

History: Enacted March 21, 1872.

§ 2039. **IMPRESSING PRIVATE STORES.** If, during a voyage, the ship's supplies fail, the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want, on payment of their value, or giving security therefor.

History: Enacted March 21, 1872, founded upon Code de Com. art. 249.

§ 2040. **WHEN MAY ABANDON THE SHIP.** The master of a ship must not abandon it during the voyage, without the advice of the other officers.

History: Enacted March 21, 1872.

§ 2041. **DUTIES ON ABANDONMENT.** The master of a ship, upon abandoning it, must carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control, he is exonerated from liability.

History: Enacted March 21, 1872, founded upon Code de Com. art. 241.

§ 2042. **WHEN MASTER CANNOT TRADE ON HIS OWN ACCOUNT.** The master of a ship, who engages for

a common profit on the cargo, must not trade on his own account, and if he does, he must account to his employer for all profits thus made by him.

History: Enacted March 21, 1872, see Code de Com. arts. 239, 240.

§ 2043. **CARE AND DILIGENCE.** The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight.

History: Enacted March 21, 1872.

§ 2044. **AUTHORITY OF MASTER.** The authority and liability of the master of a ship, as an agent for the owners of the ship and cargo, are regulated by the title on agency.

History: Enacted March 21, 1872.

ARTICLE V.

MATES AND SEAMEN.

§ 2048. Mate, what.
§ 2049. Seamen, what.
§ 2050. Mate and seamen, how engaged and discharged.
§ 2051. Unseaworthy vessel.
§ 2052. Seamen not to lose wages or lien by agreement.
§ 2053. Special agreement with seamen.
§ 2054. Wages depend on freightage.
§ 2055. When wages, etc., begin.
§ 2056. Wages, where voyage is broken up before departure.
§ 2057. Wrongful discharge.
§ 2058. Wages, when not lost by wreck.
§ 2059. Certificate.
§ 2060. Disabled seamen.
§ 2061. Maintenance of seamen during sickness.
§ 2062. Death on the voyage.
§ 2063. Theft, etc., forfeits wages.
§ 2064. Seamen cannot ship goods.
§ 2065. Embezzlement and injuries [repealed].
§ 2066. Law governing seamen.

§ 2048. **MATE, WHAT.** The mate of a ship is the officer next in rank to the master, and in case of the master's disability he must take his place. By so doing he does not lose any of his rights as mate.

History: Enacted March 21, 1872.

§ 2049. **SEAMEN, WHAT.** All persons employed in the navigation of a ship, or upon a voyage, other than the master and mate, are to be deemed seamen within the provisions of this code.

History: Enacted March 21, 1872.

§ 2050. **MATE AND SEAMEN, HOW ENGAGED AND DISCHARGED.** The mate and seamen of a ship are en-

gaged by the master, and may be discharged by him at any period of the voyage, for wilful and persistent disobedience or gross disqualification, but cannot otherwise be discharged before the termination of the voyage.

History: Enacted March 21, 1872.

§ 2051. **UNSEAWORTHY VESSEL.** A mate or seamen is [are] not bound to go to sea in a ship that is not seaworthy; and if there is reasonable doubt of its seaworthiness, he may refuse to proceed until a proper survey has been had.

History: Enacted March 21, 1872.

§ 2052. **SEAMEN NOT TO LOSE WAGES OR LIEN BY AGREEMENT.** A seaman cannot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of the ship, or to abandon any right he may have or obtain in the nature of salvage, is void.

History: Enacted March 21, 1872.

§ 2053. **SPECIAL AGREEMENT WITH SEAMEN.** No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor.

History: Enacted March 21, 1872.

§ 2054. **WAGES DEPEND ON FREIGHTAGE.** Except as hereinafter provided, the wages of seamen are due when, and so far only as, freightage is earned, unless the loss of freightage is owing to the fault of the owner or master.

History: Enacted March 21, 1872.

§ 2055. **WHEN WAGES, ETC., BEGIN.** The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

History: Enacted March 21, 1872, founded upon 13 and 14 Vic. c. 93, § 56.

§ 2056. **WAGES, WHERE VOYAGE IS BROKEN UP BEFORE DEPARTURE.** Where a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served, and may retain for their indemnity such advances as they have received.

History: Enacted March 21, 1872, modified from Code de Com. art. 252.

§ 2057. **WRONGFUL DISCHARGE.** When a mate or seaman is wrongfully discharged, or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages.

History: Enacted March 21, 1872.

§ 2058. **WAGES, WHEN NOT LOST BY WRECK.** In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo, and stores.

History: Enacted March 21, 1872, substantially same as Stats. 7 and 8 Vic., c. 112, § 17.

§ 2059. **CERTIFICATE.** A certificate from the master or chief surviving officer of a ship, to the effect that a sea-

man exerted himself to the utmost to save the ship, cargo, and stores, is presumptive evidence of the fact.

History: Enacted March 21, 1872.

§ 2060. **DISABLED SEAMEN.** Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault in the discharge of his duty on the voyage, or by being wrongfully discharged, or by a capture of the ship, he is entitled to wages notwithstanding; but in case of a capture, a ratable deduction for salvage is to be made.

History: Enacted March 21, 1872.

§ 2061. **MAINTENANCE OF SEAMEN DURING SICKNESS.** If a mate or seaman becomes sick or disabled during the voyage, without his fault, the expense of furnishing him with suitable medical advice, medicine, attendance, and other provision for his wants, must be borne by the ship till the close of the voyage.

History: Enacted March 21, 1872.

§ 2062. **DEATH ON THE VOYAGE.** If a mate or seaman dies during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

History: Enacted March 21, 1872.

§ 2063. **THEFT, ETC., FORFEITS WAGES.** Desertion of the ship without cause, or a justifiable discharge by the master during the voyage, for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a wilful injury thereto or to the ship, forfeits all wages due for the voyage to a mate or seaman thus in fault.

History: Enacted March 21, 1872.

§ 2064. **SEAMEN CANNOT SHIP GOODS.** A mate or seaman may not, under any pretext, ship goods on his own account without permission from the master.

History: Enacted March 21, 1872, founded upon Code de Com. art. 251.

§ 2065. **EMBEZZLEMENT AND INJURIES** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 247.

§ 2066. **LAW GOVERNING SEAMEN.** The shipment of officers and seamen, and their rights and duties, are further regulated by acts of Congress.

History: Enacted March 21, 1872.

ARTICLE VI.

SHIP'S MANAGERS.

§ 2070. Manager, what.
§ 2071. Duties of manager.
§ 2072. Compensation.

§ 2070. **MANAGER, WHAT.** The general agent for the owners, in respect to the care of a ship and freight, is called the manager. If he is a part owner, he is also called the managing owner.

History: Enacted March 21, 1872.

§ 2071. **DUTIES OF MANAGER.** Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of a ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate, and crew, and supplies of provisions and stores.

History: Enacted March 21, 1872.

§ 2072. **COMPENSATION.** A managing owner is presumed to have no right to compensation for his own services.

History: Enacted March 21, 1872.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

§ 2078. Voluntary interference with property.
§ 2079. Salvage.

§ 2078. VOLUNTARY INTERFERENCE WITH PROPERTY. One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

History: Enacted March 21, 1872.

§ 2079. SALVAGE. Any person, other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the title on liens; but no claim for salvage, as such, can accrue against any vessel, or her freight, or cargo, in favor of the owners, officers, or crew of another vessel belonging to the same owners; but the actual cost[s] at the time of the services rendered by one such vessel to another, when in distress, are payable through a general average contribution on the property saved.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 247; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 413, held unconstitutional, see history, § 4 ante.

TITLE VII.

CARRIAGE.

Chapter I. Carriage in General, §§ 2085-2090.
II. Carriage of Persons, §§, 2096-2104.
III. Carriage of Property, §§ 2110-2155.
IV. Carriage of Messages, §§ 2161-2162.
V. Common Carriers, §§ 2168-2209.

CHAPTER I.

CARRIAGE IN GENERAL.

§ 2085. Contract of carriage.
§ 2086. Different kinds of carriers.
§ 2087. Marine and inland carriers, what.
§ 2088. Carriers by sea.
§ 2089. Obligations of gratuitous carriers.
§ 2090. Obligations of gratuitous carrier who has begun to carry.

§ 2085. **CONTRACT OF CARRIAGE.** The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

History: Enacted March 21, 1872.

§ 2086. **DIFFERENT KINDS OF CARRIERS.** Carriage is either:

1. Inland; or,
2. Marine.

History: Enacted March 21, 1872.

§ 2087. **MARINE AND INLAND CARRIERS, WHAT.** Carriers upon the ocean and upon arms of the sea are marine carriers. All others are inland carriers.

History: Enacted March 21, 1872.

§ 2088. **CARRIERS BY SEA.** Rights and duties peculiar to carriers by sea are defined by acts of Congress.

History: Enacted March 21, 1872.

§ 2089. **OBLIGATIONS OF GRATUITOUS CARRIERS.** Carriers without reward are subject to the same rules as employees without reward, except so far as is otherwise provided by this title.

History: Enacted March 21, 1872.

§ 2090. **OBLIGATIONS OF GRATUITOUS CARRIER WHO HAS BEGUN TO CARRY.** A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

History: Enacted March 21, 1872.

CHAPTER II.

CARRIAGE OF PERSONS.

Article I. Gratuitous Carriage, § 2096.
II. Carriage for Reward, §§ 2100-2104.

ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

§ 2096. Degree of care required.

§ 2096. DEGREE OF CARE REQUIRED. A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

History: Enacted March 21, 1872.

ARTICLE II.

CARRIAGE FOR REWARD.

§ 2100. General duties of carrier.
§ 2101. Vehicles.
§ 2102. Not to overload his vehicle.
§ 2103. Treatment of passengers.
§ 2104. Rate of speed and delays.

§ 2100. GENERAL DUTIES OF CARRIER. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

History: Enacted March 21, 1872.

§ 2101. **VEHICLES.** A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

History: Enacted March 21, 1872.

§ 2102. **NOT TO OVERLOAD HIS VEHICLE.** A carrier of persons for reward must not overcrowd or overload his vehicle.

History: Enacted March 21, 1872.

§ 2103. **TREATMENT OF PASSENGERS.** A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention.

History: Enacted March 21, 1872.

§ 2104. **RATE OF SPEED AND DELAYS.** A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

History: Enacted March 21, 1872.

CHAPTER III.

CARRIAGE OF PROPERTY.

Article I. General Definitions, § 2110.
II. Obligations of the Carrier, §§ 2114-2122.
III. Bill of Lading, §§ 2126-2132.
IV. Freightage, §§ 2136-2144.
V. General Average, §§ 2148-2155.

ARTICLE I.

GENERAL DEFINITIONS.

§ 2110. Freight, consignor, etc., what.

§ 2110. FREIGHT, CONSIGNOR, ETC., WHAT. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

History: Enacted March 21, 1872.

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

§ 2114. Care and diligence required of carriers.
§ 2115. Carrier to obey directions.
§ 2116. Conflict of orders.
§ 2117. Stowage, deviation, etc.
§ 2118. Delivery of freight.
§ 2119. Place of delivery.

§ 2120. Notice when freight not delivered.
§ 2121. When consignee does not accept.
§ 2122. When consignee cannot be found [repealed].

§ 2114. CARE AND DILIGENCE REQUIRED OF CARRIERS. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

History: Enacted March 21, 1872.

§ 2115. CARRIER TO OBEY DIRECTIONS. A carrier must comply with the directions of the consignor or consignee to the same extent that an employee is bound to comply with those of his employer.

History: Enacted March 21, 1872.

§ 2116. CONFLICT OF ORDERS. When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

History: Enacted March 21, 1872.

§ 2117. STOWAGE, DEVIATION, ETC. A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

History: Enacted March 21, 1872.

§ 2118. **DELIVERY OF FREIGHT.** A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

History: Enacted March 21, 1872.

§ 2119. **PLACE OF DELIVERY.** If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried upon a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed;

2. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or, if there is no wharf, on board a lighter alongside the ship; or,

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

History: Enacted March 21, 1872.

§ 2120. **NOTICE WHEN FREIGHT NOT DELIVERED.** If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post-office.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 247.

§ 2121. **WHEN CONSIGNEE DOES NOT ACCEPT.** If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation

to deliver, or duly offered to fulfil the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 248.

§ 2122. WHEN CONSIGNEE CANNOT BE FOUND [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 248.

ARTICLE III.

BILL OF LADING.

§ 2126. Bill of lading, what.
§ 2127. Bill of lading negotiable.
§ 2128. Same. [To "bearer."]
§ 2129. Effect of bill of lading on rights, etc., of carrier.
§ 2130. Bills of lading to be given to consignor.
§ 2131. Carrier exonerated by delivery according to bill of lading.
§ 2132. Carrier may demand surrender of bill of lading before delivery.

§ 2126. BILL OF LADING, WHAT. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

History: Enacted March 21, 1872.

§ 2127. BILL OF LADING NEGOTIABLE. All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

History: Enacted March 21, 1872.

§ 2128. SAME. [TO "BEARER."] When a bill of lading is made to "bearer," or in equivalent terms, a simple transfer thereof, by delivery, conveys the same title as an indorsement.

History: Enacted March 21, 1872.

§ 2129. **EFFECT OF BILL OF LADING ON RIGHTS, ETC., OF CARRIER.** A bill of lading does not alter the rights or obligations of the carrier, as defined in this chapter, unless it is plainly inconsistent therewith.

History: Enacted March 21, 1872.

§ 2130. **BILLS OF LADING TO BE GIVEN TO CONSIGNOR.** A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him, besides, all damage thereby occasioned.

History: Enacted March 21, 1872.

§ 2131. **CARRIER EXONERATED BY DELIVERY ACCORDING TO BILL OF LADING.** A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

History: Enacted March 21, 1872.

§ 2132. **CARRIER MAY DEMAND SURRENDER OF BILL OF LADING BEFORE DELIVERY.** When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight.

History: Enacted March 21, 1872.

ARTICLE IV.

FREIGHTAGE.

§ 2136. When freightage is to be paid.
§ 2137. Consignor, when liable for freightage.
§ 2138. Consignee, when liable.
§ 2139. Natural increase of freight.
§ 2140. Apportionment by contract.
§ 2141. Same. [No objection on partial delivery.]
§ 2142. Apportionment according to distance.
§ 2143. Freight carried further than agreed, etc.
§ 2144. Carrier's lien for freightage [and for services].

§ 2136. WHEN FREIGHTAGE IS TO BE PAID. A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

History: Enacted March 21, 1872.

§ 2137. CONSIGNOR, WHEN LIABLE FOR FREIGHTAGE. The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

History: Enacted March 21, 1872.

§ 2138. CONSIGNEE, WHEN LIABLE. The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

History: Enacted March 21, 1872.

§ 2139. **NATURAL INCREASE OF FREIGHT.** No freightage can be charge upon the natural increase of freight.

History: Enacted March 21, 1872.

§ 2140. **APPORTIONMENT BY CONTRACT.** If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

History: Enacted March 21, 1872.

§ 2141. **SAME. [NO OBJECTION ON PARTIAL DELIVERY.]** If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

History: Enacted March 21, 1872.

§ 2142. **APPORTIONMENT ACCORDING TO DISTANCE.** If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

History: Enacted March 21, 1872.

§ 2143. **FREIGHT CARRIED FURTHER THAN AGREED, ETC.** If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot re-

fuse to deliver it, on the demand of the consignee, at the place and time of its arrival.

History: Enacted March 21, 1872.

§ 2144. **CARRIER'S LIEN FOR FREIGHTAGE [AND FOR SERVICES].** A carrier has a lien for freightage and for services rendered at request of shipper or consignee in and about the transportation, care and preservation of the property, and he also has a lien for money advanced at request of shipper or consignee to discharge a prior lien. His rights to such lien are regulated by the title on liens.

Histoy: Enacted March 21, 1872; amended April 19, 1909, Stats. and Amdts. 1909, p. 1000.

ARTICLE V.

GENERAL AVERAGE.

§ 2148. Jettison and general average, what.
§ 2149. Order of jettison.
§ 2150. By whom made.
§ 2151. Loss, how borne.
§ 2152. General average loss, how adjusted.
§ 2153. Values, how ascertained.
§ 2154. Things stowed on deck.
§ 2155. Application of the foregoing rules.

§ 2148. JETTISON AND GENERAL AVERAGE, WHAT. A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice, any or all of the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

History: Enacted March 21, 1872.

§ 2149. ORDER OF JETTISON. A jettison must begin with the most bulky and least valuable articles, so far as possible.

History: Enacted March 21, 1872. See Code de Com. art. 411.

§ 2150. BY WHOM MADE. A jettison can be made only by authority of the master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person.

History: Enacted March 21, 1872.

§ 2151. LOSS, HOW BORNE. The loss incurred by a jettison, when lawfully made, must be borne in due propor-

tion by all that part of the ship, appurtenances, freightage, and cargo for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed.

History: Enacted March 21, 1872.

§ 2152. **GENERAL AVERAGE LOSS, HOW ADJUSTED.** The proportions in which a general average loss is to be borne must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid there, is valid everywhere.

History: Enacted March 21, 1872.

§ 2153. **VALUES, HOW ASCERTAINED.** In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution.

History: Enacted March 21, 1872.

§ 2154. **THINGS STOWED ON DECK.** The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage.

History: Enacted March 21, 1872.

§ 2155. **APPLICATION OF THE FOREGOING RULES.** The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship, or expense necessarily incurred, for the preservation of the ship and cargo from extraordinary perils.

History: Enacted March 21, 1872.

CHAPTER IV.

CARRIERS OF MESSAGES.

§ 2161. Obligation of carrier of messages.
§ 2162. Degree of care and diligence required.

§ 2161. OBLIGATION OF CARRIER OF MESSAGES. A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph or telephone, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 248; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 413, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 627.

§ 2162. DEGREE OF CARE AND DILIGENCE REQUIRED. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 249.

CHAPTER V.

COMMON CARRIERS.

Article I. Common Carriers in General, §§ 2168-2177.
II. Common Carriers of Persons, §§ 2180-2191.
III. Common Carriers of Property, §§ 2194-2204.
IV. Common Carriers of Messages, §§ 2207-2209.

ARTICLE I.

COMMON CARRIERS IN GENERAL.

§ 2168. Common carriers, what.
§ 2169. Obligation to accept freight.
§ 2170. Common carriers not to give preference.
§ 2171. What preferences he must give.
§ 2172. Starting.
§ 2173. Compensation.
§ 2174. Obligations of carrier altered only by agreement.
§ 2175. Certain agreements void.
§ 2176. Modifications thereof.
§ 2177. Loss of valuable letters.

§ 2168. **COMMON CARRIER, WHAT.** Every one who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 249.

§ 2169. **OBLIGATION TO ACCEPT FREIGHT.** A common carrier must, if able to do so, accept and carry what-

ever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

History: Enacted March 21, 1872.

§ 2170. **COMMON CARRIERS NOT TO GIVE PREFERENCE.** A common carrier must not give preference in time, price, or otherwise, to one person over another. Every common carrier of passengers by railroad, or by vessel plying upon waters lying wholly within this state, shall establish a schedule time for the starting of trains or vessel[s] from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their said trains or vessel[s] at or within ten minutes after the schedule time so established and notice given, under a penalty of two hundred and fifty dollars for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the district attorney of the county in the name of the people, and paid into the common school fund of the said county.

History: Enacted March 21, 1872; amended April 2, 1880, Code Amdts. 1880 (C. C. pt.), p. 2; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 414, held unconstitutional, see history, § 4 ante.

§ 2171. **WHAT PREFERENCES HE MUST GIVE.** A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this state.

History: Enacted March 21, 1872.

§ 2172. **STARTING.** A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 249.

§ 2173. **COMPENSATION.** A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

History: Enacted March 21, 1872.

§ 2174. **OBLIGATIONS OF CARRIER ALTERED ONLY BY AGREEMENT.** The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

History: Enacted March 21, 1872; amended March 30, 1874. Code Amdts. 1873-4, p. 249.

§ 2175. **CERTAIN AGREEMENTS VOID.** A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or wilful wrong of himself or his servants.

History: Enacted March 21, 1872.

§ 2176. **MODIFICATIONS THEREOF.** A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated; and also to the limitation stated therein upon the amount of the carrier's liability in case property carried in packages, trunks, or boxes, is lost or injured, when the value of such property is not named; and also to the limitation stated therein to the carrier's liability for loss or injury to live animals carried. But his assent to any other modification of the carrier's obligations contained in such instrument can be manifested only by his signature to the same.

History: Enacted March 21, 1872; amended March 30, 1874. Code Amdts. 1873-4, pp. 249-250.

§ 2177. **LOSS OF VALUABLE LETTERS.** A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he be informed at the time of its receipt of the value of its contents.

History: Enacted March 30, 1874, Code Amdts. 1873-4, p. 250.

ARTICLE II.

COMMON CARRIERS OF PERSONS.

§ 2180. Obligation to carry luggage [baggage].
§ 2181. Luggage defined. [What may be carried as.]
§ 2182. Liability for luggage.
§ 2183. Luggage, how carried and delivered.
§ 2184. Obligation to provide vehicles.
§ 2185. Seats for passengers.
§ 2186. Regulations for conduct of business.
§ 2187. Fare, when payable.
§ 2188. Ejection of passengers.
§ 2189. Passenger who has not paid fare.
§ 2190. Fare not payable after ejection.
§ 2191. Carrier's lien.

§ 2180. **OBLIGATION TO CARRY LUGGAGE [BAGGAGE].** A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over one hundred pounds to a passenger; if such carrier is a proprietor of a stage line, he need not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of baggage.

History: Enacted March 21, 1872; amended March 9, 1878, Code Amdts. 1877-8, p. 87; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 414, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 615.

§ 2181. **LUGGAGE DEFINED. [WHAT MAY BE CARRIED AS.]** Luggage may consist of whatever the passenger takes with him for his personal use and convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the important ne-

cessities or to the ultimate purposes of his journey. Luggage within the meaning of this section shall include the samples, case, wares, appliances and catalogs of commercial travelers or their employers, used by them for the purpose of transacting their business and carried with them solely for that purpose, when securely packed and locked in substantial trunks or sample cases of convenient shape and weight for handling. No crate cover or other protection shall be required for any bicycle carried as luggage, but no passenger shall be entitled to carry as luggage more than one bicycle.

History: Enacted March 21, 1872; amended March 9, 1878, Code Amdts. 1877-8, p. 87; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 414, held unconstitutional, see Kerr's Cyc. C. C. § 4; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 615; April 5, 1911, Stats. and Amdts. 1911, p. 638.

§ 2182. **LIABILITY FOR LUGGAGE.** The liability of a carrier for luggage received by him with a passenger is the same as that of a common carrier of property.

History: Enacted March 21, 1872.

§ 2183. **LUGGAGE, HOW CARRIED AND DELIVERED.** A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where luggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported, it is carried at their risk.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 250.

§ 2184. OBLIGATION TO PROVIDE VEHICLES. A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

History: Enacted March 21, 1872.

§ 2185. SEATS FOR PASSENGERS. A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

History: Enacted March 21, 1872.

§ 2186. REGULATIONS FOR CONDUCT OF BUSINESS. A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

History: Enacted March 21, 1872.

§ 2187. FARE, WHEN PAYABLE. A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

History: Enacted March 21, 1872.

§ 2188. EJECTION OF PASSENGERS. A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place or near some dwelling-house.

History: Enacted March 21, 1872.

§ 2189. PASSENGER WHO HAS NOT PAID FARE. A passenger upon a railroad train who has not paid his fare

before entering the train, if he has been afforded an opportunity to do so, must, upon demand, pay ten per cent in addition to the regular rate.

History: Enacted March 21, 1872.

§ 2190. **FARE NOT PAYABLE AFTER EJECTION.** After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

History: Enacted March 21, 1872.

§ 2191. **CARRIER'S LIEN.** A common carrier has a lien upon the luggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the title on liens.

History: Enacted March 21, 1872.

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

§ 2194. Liability of inland carriers for loss.
§ 2195. When exemptions do not apply.
§ 2196. Liability for delay.
§ 2197. Liability of marine carriers.
§ 2198. Same. [Acts of Congress.]
§ 2199. Perils of sea, what.
§ 2200. Consignor of valuables to declare their nature.
§ 2201. Delivery of freight beyond usual route.
§ 2202. Proof to be given in case of loss.
§ 2203. Carrier's services, other than carriage and delivery.
§ 2204. Non-delivery—Sale, when.

§ 2194. LIABILITY OF INLAND CARRIERS FOR LOSS. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections twenty-one hundred and eighteen to twenty-one hundred and twenty-two, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice, or weakness, or a spontaneous action, of the property itself;

2. The act of a public enemy of the United States, or of this state;

3. The act of the law; or,

4. Any irresistible superhuman cause.

History: Enacted March 21, 1872.

§ 2195. WHEN EXEMPTIONS DO NOT APPLY. A common carrier is liable, even in the cases excepted by the

last section, if his want of ordinary care exposes the property to the cause of the loss.

History: Enacted March 21, 1872; amended by Code Commission. Act March 16, 1901, Stats. and Amdts. 1900-1, p. 414, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 615.

§ 2196. **LIABILITY FOR DELAY.** A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 251.

§ 2197. **LIABILITY OF MARINE CARRIER.** A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire.

History: Enacted March 21, 1872.

§ 2198. **SAME. [ACTS OF CONGRESS.]** The liability of a common carrier by sea is further regulated by acts of Congress.

History: Enacted March 21, 1872.

§ 2199. **PERILS OF SEA, WHAT.** Perils of the sea are from:

1. Storms and waves;
2. Rocks, shoals, and rapids;
3. Other obstacles, though of human origin;
4. Changes of climate;
5. The confinement necessary at sea;
6. Animals peculiar to the sea; and,
7. All other dangers peculiar to the sea.

History: Enacted March 21, 1872.

§ 2200. **CONSIGNOR OF VALUABLES TO DECLARE THEIR NATURE.** A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 251.

§ 2201. **DELIVERY OF FREIGHT BEYOND USUAL ROUTE.** If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

History: Enacted March 21, 1872.

§ 2202. **PROOF TO BE GIVEN IN CASE OF LOSS.** If freight addressed to a place beyond the usual route of the common carrier who first received it is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

History: Enacted March 21, 1872.

§ 2203. **CARRIER'S SERVICES, OTHER THAN CARRIAGE AND DELIVERY.** In respect to any service ren-

dered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the titles on deposit and service.

History: Enacted March 21, 1872.

§ 2204. **NON-DELIVERY—SALE, WHEN.** If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market to satisfy his lien for freightage.

History: Enacted March 30, 1874, Code Amdts. 1873-4, p. 251.

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

§ 2207. Order of transmission of telegraphic messages.
§ 2208. Order in other cases.
§ 2209. Damages when message is refused or postponed.

§ 2207. ORDER OF TRANSMISSION OF TELEGRAPHIC MESSAGES. A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this state, on public business;

2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use;

3. Messages giving information relating to the sickness or death of any person;

4. Other messages in the order in which they were received.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 414, held unconstitutional, see history, § 4 ante.

§ 2208. ORDER IN OTHER CASES. A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this state, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 414, held unconstitutional, see history, § 4 ante.

§ 2209. **DAMAGES WHEN MESSAGE IS REFUSED OR POSTPONED.** Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

History: Enacted March 21, 1872.

TITLE VIII.

TRUSTS.

[**Commissioners' note.**—This title should be read in connection with the title on "Uses and Trusts," §§ 847 to 871, inclusive, and it must be borne in mind that the latter relates to real property only, and "Uses and Trusts" are treated as estates. In this title "Trusts" are considered as relating to property generally, and are treated in the light of obligations.]

Chapter I. Trusts in General, §§ 2215-2244.
II. Trusts for the Benefit of Third Persons, §§ 2250-2289.

CHAPTER I.

TRUSTS IN GENERAL.

Article I. Nature and Creation of a Trust, §§ 2215-2224.
II. Obligations of Trustees, §§ 2228-2239.
III. Obligations of Third Persons, §§ 2243, 2244.

ARTICLE I.

NATURE AND CREATION OF A TRUST.

§ 2215. Trusts classified.
§ 2216. Voluntary trust, what.
§ 2217. Involuntary trust, what.
§ 2218. Parties to the contract.
§ 2219. What constitutes one a trustee.
§ 2220. For what purpose a trust may be created.

§ 2221. Voluntary trust, how created as to truster.
§ 2222. How created as to trustee.
§ 2223. Involuntary trustee, who is.
§ 2224. Involuntary trust resulting from negligence, etc.

§ 2215. **TRUSTS CLASSIFIED.** A trust is either:
1. Voluntary; or,
2. Involuntary.

History: Enacted March 21, 1872.

§ 2216. **VOLUNTARY TRUST, WHAT.** A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

History: Enacted March 21, 1872.

§ 2217. **INVOLUNTARY TRUST, WHAT.** An involuntary trust is one which is created by operation of law.

History: Enacted March 21, 1872.

§ 2218. **PARTIES TO THE CONTRACT.** The person whose confidence creates a trust is called the truster; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

History: Enacted March 21, 1872.

§ 2219. **WHAT CONSTITUTES ONE A TRUSTEE.** Every one who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such

person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

History: Enacted March 21, 1872.

§ 2220. **FOR WHAT PURPOSE A TRUST MAY BE CREATED.** A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the titles on uses and trusts and on transfers.

History: Enacted March 21, 1872.

§ 2221. **VOLUNTARY TRUST, HOW CREATED AS TO TRUSTER.** Subject to the provisions of section eight hundred and fifty-two, a voluntary trust is created, as to the truster and beneficiary, by any words or acts of the truster, indicating with reasonable certainty:

1. An intention on the part of the truster to create a trust; and,

2. The subject, purpose, and beneficiary of the trust.

History: Enacted March 21, 1872.

§ 2222. **HOW CREATED AS TO TRUSTEE.** Subject to the provisions of section eight hundred and fifty-two, a voluntary trust is created, as to the trustee, by any words or acts of his indicating, with reasonable certainty:

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,

2. The subject, purpose, and beneficiary of the trust.

History: Enacted March 21, 1872.

§ 2223. **INVOLUNTARY TRUSTEE, WHO IS.** One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

History: Enacted March 21, 1872.

§ 2224. INVOLUNTARY TRUST RESULTING FROM NEGLIGENCE, ETC. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

History: Enacted March 21, 1872.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

§ 2228. Trustee's obligation to good faith.
§ 2229. Trustee not to use property for his own profit.
§ 2230. Certain transactions forbidden.
§ 2231. Trustee's influence not to be used for his advantage.
§ 2232. Trustee not to assume a trust adverse to interest of beneficiary.
§ 2233. To disclose adverse interest.
§ 2234. Trustee guilty of fraud, when.
§ 2235. Presumption against trustees.
§ 2236. Trustee mingling trust property with his own.
§ 2237. Measure of liability for breach of trust.
§ 2238. Same. [For losses only, when,]
§ 2239. Cotrustees, how far liable for each other.

§ 2228. TRUSTEE'S OBLIGATION TO GOOD FAITH. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

History: Enacted March 21, 1872.

§ 2229. TRUSTEE NOT TO USE PROPERTY FOR HIS OWN PROFIT. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

History: Enacted March 21, 1872.

§ 2230. CERTAIN TRANSACTIONS FORBIDDEN. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for

whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

2. When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed.

History: Enacted March 21, 1872.

§ 2231. **TRUSTEE'S INFLUENCE NOT TO BE USED FOR HIS ADVANTAGE.** A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

History: Enacted March 21, 1872.

§ 2232. **TRUSTEE NOT TO ASSUME A TRUST ADVERSE TO INTEREST OF BENEFICIARY.** No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

History: Enacted March 21, 1872.

§ 2233. **TO DISCLOSE ADVERSE INTEREST.** If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

History: Enacted March 21, 1872.

§ 2234. **TRUSTEE GUILTY OF FRAUD, WHEN.** Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of a trust.

History: Enacted March 21, 1872.

§ 2235. **PRESUMPTION AGAINST TRUSTEES.** All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

History: Enacted March 21, 1872.

§ 2236. **TRUSTEE MINGLING TRUST PROPERTY WITH HIS OWN.** A trustee who wilfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 415, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 615.

§ 2237. **MEASURE OF LIABILITY FOR BREACH OF TRUST.** A trustee who uses or disposes of the trust property, contrary to section twenty-two hundred and twenty-nine, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

History: Enacted March 21, 1872.

§ 2238. **SAME. [FOR LOSSES ONLY, WHEN.]** A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and

with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

History: Enacted March 21, 1872.

§ 2239. **COTRUSTEES, HOW FAR LIABLE FOR EACH OTHER.** A trustee is responsible for the wrongful acts of a cotrustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

History: Enacted March 21, 1872.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

§ 2243. Third person, when involuntary trustee.
§ 2244. When third person must see to application of trust property.

§ 2243. THIRD PERSON, WHEN INVOLUNTARY TRUSTEE. Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration.

History: Enacted March 21, 1872.

§ 2244. WHEN THIRD PERSON MUST SEE TO APPLICATION OF TRUST PROPERTY. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

History: Enacted March 21, 1872.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

Article I. Nature and Creation of the Trust, §§ 2250-2254.
II. Obligations of Trustees, §§ 2258-2263.
III. Powers of Trustees, §§ 2267-2269.
IV. Rights of Trustees, §§ 2273-2275.
V. Termination of the Trust, §§ 2279-2283.
VI. Succession or Appointment of New Trustees, §§ 2287-2289.

ARTICLE I.

NATURE AND CREATION OF THE TRUST.

§ 2250. Who are trustees within the scope of this chapter.
§ 2251. Creation of trust.
§ 2252. Trustees appointed by court.
§ 2253. Declaration of trust.
§ 2254. Same. [Declarations before acceptance.]

§ 2250. **WHO ARE TRUSTEES WITHIN SCOPE OF THIS CHAPTER.** The provisions of this chapter apply only to express trusts, created for the benefit of another than the truster, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such.

History: Enacted March 21, 1872.

§ 2251. **CREATION OF TRUST.** The mutual consent of a truster and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission.

History: Enacted March 21, 1872.

§ 2252. **TRUSTEES APPOINTED BY COURT.** When a trustee is appointed by a court or public officer, as such, such court or officer is the truster, within the meaning of the last section.

History: Enacted March 21, 1872.

§ 2253. **DECLARATION OF TRUST.** The nature, extent, and object of a trust are expressed in the declaration of trust.

History: Enacted March 21, 1872.

§ 2254. **SAME. [DECLARATION BEFORE ACCEPTANCE.]** All declarations of a truster to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same truster are merged therein.

History: Enacted March 21, 1872.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

§ 2258. Trustees must obey declaration of trust.
§ 2259. Degree of care and diligence in execution of trust.
§ 2260. Duty of trustee as to appointment of successor.
§ 2261. Investment of money by trustee.
§ 2262. Interest, simple or compound, on omission to invest trust moneys.
§ 2263. Purchase by trustee of claims against trust fund.

§ 2258. TRUSTEES MUST OBEY DECLARATION OF TRUST. A trustee must fulfil the purpose of the trust, as declared at its creation, and must follow all the directions of the truster given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee.

History: Enacted March 21, 1872.

§ 2259. DEGREE OF CARE AND DILIGENCE IN EXECUTION OF TRUST. A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

History: Enacted March 21, 1872.

§ 2260. DUTY OF TRUSTEE AS TO APPOINTMENT OF SUCCESSOR. If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

History: Enacted March 21, 1872.

§ 2261. **INVESTMENT OF MONEY BY TRUSTEE.** A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

History: Enacted March 21, 1872.

§ 2262. **INTEREST, SIMPLE OR COMPOUND, ON OMISSION TO INVEST TRUST MONEYS.** If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is wilful.

History: Enacted March 21, 1872.

§ 2263. **PURCHASE BY TRUSTEE OF CLAIMS AGAINST TRUST FUND.** A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

History: Enacted March 21, 1872.

ARTICLE III.

POWERS OF TRUSTEES.

§ 2267. Trustee's powers as agent.
§ 2268. All must act.
§ 2269. Discretionary powers.

§ 2267. **TRUSTEE'S POWER AS AGENT.** A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

History: Enacted March 21, 1872.

§ 2268. **ALL MUST ACT.** Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

History: Enacted March 21, 1872.

§ 2269. **DISCRETIONARY POWERS.** A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

History: Enacted March 21, 1872.

ARTICLE IV.

RIGHTS OF TRUSTEES.

§ 2273. Indemnification of trustee.
§ 2274. Compensation of trustee.
§ 2275. Involuntary trustee.

§ 2273. INDEMNIFICATION OF TRUSTEE. A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

History: Enacted March 21, 1872.

§ 2274. COMPENSATION OF TRUSTEE. Except as provided in section seventeen hundred of the Code of Civil Procedure, when a declaration of trust is silent upon the subject of compensation the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. If there are two or more trustees the compensation shall be apportioned among the trustees according to the services rendered by them respectively.

History: Enacted March 21, 1872; amended March 19, 1889, Stats. and Amdts. 1889, p. 334; March 10, 1909, Stats. and Amdts. 1909, p. 252.

§ 2275. INVOLUNTARY TRUSTEE. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article.

History: Enacted March 21, 1872.

ARTICLE V.

TERMINATION OF THE TRUST.

§ 2279. Trust, how extinguished.
§ 2280. Not revocable.
§ 2281. Trustee's office, how vacated.
§ 2282. Trustee, how discharged.
§ 2283. Removal of trustee by court.

§ 2279. TRUST, HOW EXTINGUISHED. A trust is extinguished by the entire fulfilment of its object, or by such object becoming impossible or unlawful.

History: Enacted March 21, 1872.

§ 2280. NOT REVOCABLE. A trust cannot be revoked by the truster after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the truster, and in that case the power must be strictly pursued.

History: Enacted March 21, 1872.

§ 2281. TRUSTEE'S OFFICE, HOW VACATED. The office of a trustee is vacated:

1. By his death; or,
2. By his discharge.

History: Enacted March 21, 1872.

§ 2282. TRUSTEE, HOW DISCHARGED. A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;

3. By such means as may be prescribed by the declaration of trust;

4. By the consent of the beneficiary, if he have capacity to contract;

5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,

6. By the superior court.

History: Enacted March 21, 1872; amended February 15, 1883, Stats. and Amdts. 1883, p. 3.

§ 2283. **REMOVAL OF TRUSTEE BY COURT.** The superior court may remove any trustee who has violated or is unfit to execute the trust, or may accept the resignation of a trustee.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 8.

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

§ 2287. Vacant trusteeship filled by court.
§ 2288. Survivorship between cotrustees.
§ 2289. Superior court as trustee.

§ 2287. VACANT TRUSTEESHIP FILLED BY COURT. [NOMINATION BY CESTUI QUE TRUST.] The superior court must appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practical method of appointment. In all cases of appointment of any trustee or trustees by any court, if the cestui que trustent, or any one of them are of the age of fourteen years, they, or the one or more of them of the age of fourteen years, may make nomination to the court, and unless such nominee or nominees are incompetent, upon one or more of the grounds of incompetency specified in section one thousand three hundred and fifty of the Code of Civil Procedure of California, to discharge the duties of trustee, the court must appoint such nominee, or nominees, as trustee, or trustees as the case may be.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 8; February 25, 1911, Stats. and Amdts. 1911, p. 79; June 6, 1913, Stats. and Amdts. 1913, p. 395. **In effect** August 10, 1913.

§ 2288. SURVIVORSHIP BETWEEN COTRUSTEES. On the death, renunciation, or discharge of one of several cotrustees the trust survives to the others.

History: Enacted March 21, 1872.

§ 2289. **SUPERIOR COURT AS TRUSTEE.** When a trusts exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the superior court of the county where the trust property, or some portion thereof, is situated, must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

History: Enacted March 21, 1872; amended April 6, 1880, Code Amdts. 1880 (C. C. pt.), p. 8.

TITLE IX.

AGENCY.

[**Commissioners' note.**—"Under this head the representation of one person by another is the only subject treated. The rights acquired by third persons against both the principal and the agent are here stated. The mutual relations of principal and agent are a branch of service, and are defined in the title on that subject. So far as these relations create a mutual trust, they are regulated by the title on trusts."]

Chapter I. Agency in General, §§ 2295-2356.
II. Particular Agencies, §§ 2362-2389.

CHAPTER I.

AGENCY IN GENERAL.

Article I. Definition of Agency, §§ 2295-2300.
II. Authority of Agents, §§ 2304-2326.
III. Mutual Obligations of Principals and Third Persons, §§ 2330-2339.
IV. Obligations of Agents to Third Persons, §§ 2342-2345.
V. Delegation of Agency, §§ 2349-2351.
VI. Termination of Agency, §§ 2355, 2356.

ARTICLE I.

DEFINITION OF AGENCY.

§ 2295. Agency, what.
§ 2296. Who may appoint, and who may be an agent.
§ 2297. Agents, general or special.
§ 2298. Agency, actual or ostensible.
§ 2299. Actual agency.
§ 2300. Ostensible agency.

§ 2295. AGENCY, WHAT. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

History: Enacted March 21, 1872.

§ 2296. WHO MAY APPOINT, AND WHO MAY BE AN AGENT. Any person having capacity to contract may appoint an agent, and any person may be an agent.

History: Enacted March 21, 1872.

§ 2297. AGENTS, GENERAL OR SPECIAL. An agent for a particular act or transaction is called a special agent. All others are general agents.

History: Enacted March 21, 1872.

§ 2298. AGENCY, ACTUAL OR OSTENSIBLE. An agency is either actual or ostensible.

History: Enacted March 21, 1872.

§ 2299. ACTUAL AGENCY. An agency is actual when the agent is really employed by the principal.

History: Enacted March 21, 1872.

§ 2300. **OSTENSIBLE AGENCY.** An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

History: Enacted March 21, 1872.

ARTICLE II.

AUTHORITY OF AGENTS.

§ 2304. What authority may be conferred.
§ 2305. Agent may perform acts required of principal by code.
§ 2306. Agent cannot have authority to defraud principal.
§ 2307. Creation of agency.
§ 2308. Consideration unnecessary.
§ 2309. Form of authority.
§ 2310. Ratification of agent's act.
§ 2311. Ratification of part of a transaction.
§ 2312. When ratification void.
§ 2313. Ratification not to work injury to third persons.
§ 2314. Rescission of ratification.
§ 2315. Measure of agent's authority.
§ 2316. Actual authority, what.
§ 2317. Ostensible authority, what.
§ 2318. Agent's authority as to persons having notice of restrictions upon it.
§ 2319. Agent's necessary authority.
§ 2320. Agent's power to disobey instructions.
§ 2321. Authority to be construed by its specific, rather than by its general terms.
§ 2322. Exceptions to general authority.
§ 2323. What included in authority to sell personal property.
§ 2324. What included in authority to sell real property.
§ 2325. Authority of general agent to receive price of property.
§ 2326. Authority of special agent to receive price.

§ 2304. WHAT AUTHORITY MAY BE CONFERRED. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

History: Enacted March 21, 1872.

§ 2305. AGENT MAY PERFORM ACTS REQUIRED OF PRINCIPAL BY CODE. Every act which, according

to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

History: Enacted March 21, 1872.

§ 2306. **AGENT CANNOT HAVE AUTHORITY TO DEFRAUD PRINCIPAL.** An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

History: Enacted March 21, 1872.

§ 2307. **CREATION OF AGENCY.** An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

History: Enacted March 21, 1872.

§ 2308. **CONSIDERATION UNNECESSARY.** A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

History: Enacted March 21, 1872.

§ 2309. **FORM OF AUTHORITY.** An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

History: Enacted March 21, 1872.

§ 2310. **RATIFICATION OF AGENT'S ACT.** A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

History: Enacted March 21, 1872.

§ 2311. **RATIFICATION OF PART OF A TRANSACTION.** Ratification of part of an indivisible transaction is a ratification of the whole.

History: Enacted March 21, 1872.

§ 2312. **WHEN RATIFICATION VOID.** A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

History: Enacted March 21, 1872.

§ 2313. **RATIFICATION NOT TO WORK INJURY TO THIRD PERSONS.** No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

History: Enacted March 21, 1872.

§ 2314. **RESCISSION OF RATIFICATION.** A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

History: Enacted March 21, 1872.

§ 2315. **MEASURE OF AGENT'S AUTHORITY.** An agent has such authority as the principal, actually or ostensibly, confers upon him.

History: Enacted March 21, 1872.

§ 2316. **ACTUAL AUTHORITY, WHAT.** Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

History: Enacted March 21, 1872.

§ 2317. **OSTENSIBLE AUTHORITY, WHAT.** Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

History: Enacted March 21, 1872.

§ 2318. **AGENT'S AUTHORITY AS TO PERSONS HAVING NOTICE OF RESTRICTIONS UPON IT.** Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

History: Enacted March 21, 1872.

§ 2319. **AGENT'S NECESSARY AUTHORITY.** An agent has authority:

1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

History: Enacted March 21, 1872.

§ 2320. **AGENT'S POWER TO DISOBEY INSTRUCTIONS.** An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

History: Enacted March 21, 1872.

§ 2321. AUTHORITY TO BE CONSTRUED BY ITS SPECIFIC, RATHER THAN BY ITS GENERAL TERMS. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

History: Enacted March 21, 1872.

§ 2322. EXCEPTIONS TO GENERAL AUTHORITY. An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so;

2. To define the scope of his agency; or,

3. To do any act which a trustee is forbidden to do by article two, chapter one, of the last title.

History: Enacted March 21, 1872.

§ 2323. WHAT INCLUDED IN AUTHORITY TO SELL PERSONAL PROPERTY. An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

History: Enacted March 21, 1872.

§ 2324. WHAT INCLUDED IN AUTHORITY TO SELL REAL PROPERTY. An authority to sell and convey real property includes authority to give the usual covenants of warranty.

History: Enacted March 21, 1872.

§ 2325. AUTHORITY OF GENERAL AGENT TO RECEIVE PRICE OF PROPERTY. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

History: Enacted March 21, 1872.

§ 2326. **AUTHORITY OF SPECIAL AGENT TO RECEIVE PRICE.** A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

History: Enacted March 21, 1872.

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

§ 2330. Principal, how affected by acts of agent within the scope of his authority.
§ 2331. Principal, when bound by incomplete execution of authority.
§ 2332. Notice to agent, when notice to principal.
§ 2333. Obligation of principal when agent exceeds authority.
§ 2334. For acts done under a merely ostensible authority.
§ 2335. When exclusive credit is given to agent.
§ 2336. Rights of person who deals with agent without knowledge of agency.
§ 2337. Instrument intended to bind principal does bind him.
§ 2338. Principal's responsibility for agent's negligence or omission.
§ 2339. Principal's responsibility for wrongs wilfully committed by the agent.

§ 2330. PRINCIPAL, HOW AFFECTED BY ACTS OF AGENT WITHIN THE SCOPE OF HIS AUTHORITY. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

History: Enacted March 21, 1872.

§ 2331. PRINCIPAL, WHEN BOUND BY INCOMPLETE EXECUTION OF AUTHORITY. A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

History: Enacted March 21, 1872.

§ 2332. NOTICE TO AGENT, WHEN NOTICE TO PRINCIPAL. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

History: Enacted March 21, 1872.

§ 2333. OBLIGATION OF PRINCIPAL WHEN AGENT EXCEEDS HIS AUTHORITY. When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

History: Enacted March 21, 1872.

§ 2334. FOR ACTS DONE UNDER A MERELY OSTENSIBLE AUTHORITY. A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 415, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 616.

§ 2335. WHEN EXCLUSIVE CREDIT IS GIVEN TO AGENT. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

History: Enacted March 21, 1872.

§ 2336. RIGHTS OF PERSON WHO DEALS WITH AGENT WITHOUT KNOWLEDGE OF AGENCY. One

who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

History: Enacted March 21, 1872.

§ 2337. **INSTRUMENT INTENDED TO BIND PRINCIPAL DOES BIND HIM.** An instrument within the scope of his authority by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

History: Enacted March 21, 1872.

§ 2338. **PRINCIPAL'S RESPONSIBILITY FOR AGENT'S NEGLIGENCE OR OMISSION.** Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his wilful omission to fulfil the obligations of the principal.

History: Enacted March 21, 1872.

§ 2339. **PRINCIPAL'S RESPONSIBILITY FOR WRONGS WILFULLY COMMITTED BY THE AGENT.** A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

History: Enacted March 21, 1872.

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

§ 2342. Warranty of authority.
§ 2343. Agent's responsibility to third persons.
§ 2344. Obligation of agent to surrender property to third person.
§ 2345. Agent not having capacity to contract.

§ 2342. **WARRANTY OF AUTHORITY.** One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

History: Enacted March 21, 1872.

§ 2343. **AGENT'S RESPONSIBILITY TO THIRD PERSONS.** One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction;

2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,

3. When his acts are wrongful in their nature.

History: Enacted March 21, 1872.

§ 2344. **OBLIGATION OF AGENT TO SURRENDER PROPERTY TO THIRD PERSON.** If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified

for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

History: Enacted March 21, 1872.

§ 2345. **AGENT NOT HAVING CAPACITY TO CONTRACT.** The provisions of this article are subject to the provisions of part one, division first, of this code.

History: Enacted March 21, 1872.

ARTICLE V.

DELEGATION OF AGENCY.

§ 2349. Agent's delegation of his powers.
§ 2350. Agent's unauthorized employment of subagent.
§ 2351. Subagent rightfully appointed represents principal.

§ 2349. AGENT'S DELEGATION OF HIS POWERS. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical;
2. When it is such as the agent cannot himself, and the subagent can lawfully perform;
3. When it is the usage of the place to delegate such powers; or,
4. When such delegation is specially authorized by the principal.

History: Enacted March 21, 1872.

§ 2350. AGENT'S UNAUTHORIZED EMPLOYMENT OF SUBAGENT. If an agent employs a subagent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

History: Enacted March 21, 1872.

§ 2351. SUBAGENT RIGHTFULLY APPOINTED REPRESENTS PRINCIPAL. A subagent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the subagent.

History: Enacted March 21, 1872.

ARTICLE VI.

TERMINATION OF AGENCY.

§ 2355. Termination of agency.
§ 2356. Same. [Where coupled with an interest.]

§ 2355. TERMINATION OF AGENCY. An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term;
2. The extinction of its subject;
3. The death of the agent;
4. His renunciation of the agency; or,
5. The incapacity of the agency [agent] to act as such.

History: Enacted March 21, 1872.

§ 2356. SAME. [WHERE COUPLED WITH AN INTEREST.] Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by:

1. Its revocation by the principal;
2. His death; or,
3. His incapacity to contract.

History: Enacted March 21, 1872.

CHAPTER II.

PARTICULAR AGENCIES.

Article I. Auctioneers, §§ 2362, 2363.
II. Factors, §§ 2367-2369.
III. Shipmasters and pilots, §§ 2373-2385.
IV. Ships' managers, §§ 2388, 2389.

ARTICLE I.

AUCTIONEERS.

§ 2362. Auctioneer's authority from the seller.
§ 2363. Auctioneer's authority from the bidder.

§ 2362. AUCTIONEER'S AUTHORITY FROM THE SELLER. An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows:

1. To sell by public auction to the highest bidder;

2. To sell for cash only, except such articles as are usually sold on credit at auction;

3. To warrant, in like manner with other agents to sell, according to section twenty-three hundred and twenty-three;

4. To prescribe reasonable rules and terms of sale;

5. To deliver the thing sold, upon payment of the price;

6. To collect the price; and,

7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

History: Enacted March 21, 1872.

§ 2363. **AUCTIONEER'S AUTHORITY FROM THE BIDDER.** An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in the title on sale.

History: Enacted March 21, 1872.

ARTICLE II.

FACTORS.

§ 2367. Factor, what.
§ 2368. Actual authority of factor.
§ 2369. Ostensible authority.

§ 2367. **FACTOR, WHAT.** A factor is an agent, as defined by section two thousand and twenty-six.

History: Enacted March 21, 1872.

§ 2368. **ACTUAL AUTHORITY OF FACTOR.** In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted:

1. To insure property consigned to him uninsured;

2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,

3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

History: Enacted March 21, 1872.

§ 2369. **OSTENSIBLE AUTHORITY.** A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

History: Enacted March 21, 1872.

ARTICLE III.

SHIPMASTERS AND PILOTS.

§ 2373. Authority of shipmaster on behalf of ship-owner.
§ 2374. Authority to borrow.
§ 2375. Authority on behalf of owners of cargo.
§ 2376. Power to make contracts.
§ 2377. Power to hypothecate.
§ 2378. Master's power to sell ship.
§ 2379. Master's power to sell cargo.
§ 2380. Authority to ransom ship.
§ 2381. Abandonment terminates master's power.
§ 2382. Personal liability for contracts concerning the ship.
§ 2383. Liability for acts of persons employed upon the ship.
§ 2384. Responsibility for negligence of pilot.
§ 2385. Ship-owner's liability for cargo sold, etc.

§ 2373. AUTHORITY OF SHIPMASTER ON BEHALF OF SHIP-OWNER. The master of a ship is a general agent for its owner in all matters concerning the same.

History: Enacted March 21, 1872.

§ 2374. AUTHORITY TO BORROW. The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay.

History: Enacted March 21, 1872.

§ 2375. AUTHORITY ON BEHALF OF OWNERS OF CARGO. The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, but he cannot sell or hypothecate the cargo, except in the cases mentioned in this article.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 251.

§ 2376. **POWER TO MAKE CONTRACTS.** The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and, in a foreign port, may enter into a charter party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.

History: Enacted March 21, 1872.

§ 2377. **POWER TO HYPOTHECATE.** The master of a ship may hypothecate the ship, freightage, and cargo, and sell part of the cargo, in the cases prescribed by the chapters on bottomry and respondentia, and in no others, except that the master may also sell the cargo, or any part of it, short of the port of destination, if found to be of such perishable nature, or in such damaged condition that if left on board or reshipped it would be entirely lost, or would seriously endanger the interests of its owners.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 252.

§ 2378. **MASTER'S POWER TO SELL SHIP.** When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions.

History: Enacted March 21, 1872.

§ 2379. **MASTER'S POWER TO SELL CARGO.** The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

History: Enacted March 21, 1872.

§ 2380. **AUTHORITY TO RANSOM SHIP.** The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage, and cargo.

History: Enacted March 21, 1872.

§ 2381. **ABANDONMENT TERMINATES MASTER'S POWER.** The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers.

History: Enacted March 21, 1872.

§ 2382. **PERSONAL LIABILITY FOR CONTRACTS CONCERNING THE SHIP.** Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.

History: Enacted March 21, 1872.

§ 2383. **LIABILITY FOR ACTS OF PERSONS EMPLOYED UPON THE SHIP.** The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.

History: Enacted March 21, 1872.

§ 2384. **RESPONSIBILITY FOR NEGLIGENCE OF PILOT.** The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot, whether he employs him or not, he is so responsible to third persons.

History: Enacted March 21, 1872.

§ 2385. SHIP-OWNER'S LIABILITY FOR CARGO SOLD, ETC. The owner of a ship is bound to pay to the owner of her cargo the market value at the time of arrival of the ship at the port of her destination, of that portion of her cargo which has been sold to enable the master to pay the necessary repairs and supplies of the ship.

History: Enacted March 30, 1874, Code Amdts. 1873-4, p. 252.

ARTICLE IV.

SHIPS' MANAGERS.

§ 2388. What powers manager has.
§ 2389. What powers he has not.

§ 2388. WHAT POWERS MANAGER HAS. A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter parties, or make contracts for carriage; and to settle for freightage and adjust averages.

History: Enacted March 21, 1872.

§ 2389. WHAT POWERS HE HAS NOT. Without special authority a ship's manager cannot borrow money or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

History: Enacted March 21, 1872.

TITLE X.

PARTNERSHIP.

Chapter I. Partnership in General, §§ 2395-2418.
II. General Partnership, §§ 2424-2471.
III. Special Partnership, §§ 2477-2510.
IV. Mining Partnership, §§ 2511-2520.

CHAPTER I.

PARTNERSHIP IN GENERAL.

Article I. What Constitutes a Partnership, §§ 2395-2397.
II. Partnership Property, §§ 2401-2406.
III. Mutual Obligations of Partners, §§ 2410-2413.
IV. Renunciation of Partnership, §§ 2417-2418.

ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

§ 2395. Partnership, what.
§ 2396. Ship-owners.
§ 2397. Formation of partnership.

§ 2395. **PARTNERSHIP, WHAT.** Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

History: Enacted March 21, 1872.

§ 2396. **SHIP-OWNERS.** Part owners of a ship do not, by simply using it in a joint enterprise, become partners as to the ship.

History: Enacted March 21, 1872.

§ 2397. **FORMATION OF PARTNERSHIP.** A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

History: Enacted March 21, 1872.

ARTICLE II.

PARTNERSHIP PROPERTY.

§ 2401. Partnership property, what.
§ 2402. Partner's interest in partnership property.
§ 2403. Partner's share in profits and losses.
§ 2404. When division of losses implied.
§ 2405. Partner may require application of partnership property to payment of debts.
§ 2406. What property is partnership property by presumption.

§ 2401. PARTNERSHIP PROPERTY, WHAT. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired thereby.

History: Enacted March 21, 1872.

§ 2402. PARTNER'S INTEREST IN PARTNERSHIP PROPERTY. The interest of each member of a partnership extends to every portion of its property.

History: Enacted March 21, 1872.

§ 2403. PARTNER'S SHARE IN PROFITS AND LOSSES. In the absence of any agreement on the subject the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

History: Enacted March 21, 1872.

§ 2404. WHEN DIVISION OF LOSSES IMPLIED. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

History: Enacted March 21, 1872.

§ 2405. **PARTNER MAY REQUIRE APPLICATION OF PARTNERSHIP PROPERTY TO PAYMENT OF DEBTS.** Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance if any due to him.

History: Enacted March 21, 1872.

§ 2406. **WHAT PROPERTY IS PARTNERSHIP PROPERTY BY PRESUMPTION.** Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 415, held unconstitutional, see history, § 4 ante.

ARTICLE III.

MUTUAL OBLIGATION OF PARTNERS.

§ 2410. Partners trustees for each other.
§ 2411. Good faith to be observed between them.
§ 2412. Mutual liability of partners to account.
§ 2413. No compensation for services to firm.

§ 2410. PARTNERS TRUSTEES FOR EACH OTHER. The relations of partners are confidential. They are trustees for each other within the meaning of chapter one of the title on trusts, and their obligations as such trustees are defined by that chapter.

History: Enacted March 21, 1872.

§ 2411. GOOD FAITH TO BE OBSERVED BETWEEN THEM. In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

History: Enacted March 21, 1872.

§ 2412. MUTUAL LIABILITY OF PARTNERS TO ACCOUNT. Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

History: Enacted March 21, 1872.

§ 2413. **NO COMPENSATION FOR SERVICES TO FIRM.** A partner is not entitled to any compensation for services rendered by him to the partnership.

History: Enacted March 21, 1872.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

§ 2417. Renunciation of future profits exonerates from liability.
§ 2418. Effect of renunciation.

§ 2417. RENUNCIATION OF FUTURE PROFITS EXONERATES FROM LIABILITY. A partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.

History: Enacted March 21, 1872.

§ 2418. EFFECT OF RENUNCIATION. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

History: Enacted March 21, 1872.

CHAPTER II.

GENERAL PARTNERSHIP.

Article I. What is a General Partnership, § 2424.
II. Powers and Authority of Partners, §§ 2428-2431.
III. Mutual Obligations of Partners, §§ 2435-2438.
IV. Liability of Partners, §§ 2442-2445.
V. Termination of Partnership, §§ 2449-2454.
VI. Liquidation, §§ 2458-2462.
VII. Of the Use of Fictitious Names, §§ 2466-2472.

ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

§ 2424. General partnership, what.

§ 2424. GENERAL PARTNERSHIP, WHAT. Every partnership that is not formed in accordance with the law concerning special or mining partnerships, and every special partnership, so far only as the general partners are concerned, is a general partnership.

History: Enacted March 21, 1872.

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

§ 2428. Power of majority of partners.
§ 2429. Authority of individual partner.
§ 2430. What authority partner has not.
§ 2431. Partner's acts in bad faith, when ineffectual.

§ 2428. POWER OF MAJORITY OF PARTNERS. Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

History: Enacted March 21, 1872.

§ 2429. AUTHORITY OF INDIVIDUAL PARTNER. Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement in writing.

History: Enacted March 21, 1872.

§ 2430. WHAT AUTHORITY PARTNER HAS NOT. A partner, as such, has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him, or are incapable of acting:

1. To make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors;

2. To dispose of the good will of the business;

3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise;

4. To do any act which would make it impossible to carry on the ordinary business of the partnership;

5. To confess a judgment;

6. To submit a partnership claim to arbitration;

7. To do any other act not within the scope of the preceding section.

History: Enacted March 21, 1872.

§ 2431. **PARTNER'S ACTS IN BAD FAITH, WHEN INEFFECTUAL.** A partner is not bound by any act of a copartner, in bad faith toward him, though within the scope of the partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

History: Enacted March 21, 1872.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

§ 2435. Profits of individual partner.
§ 2436. In what business partner may not engage.
§ 2437. In what he may engage.
§ 2438. Must account to firm for profits.

§ 2435. PROFITS OF INDIVIDUAL PARTNER. All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

History: Enacted March 21, 1872.

§ 2436. IN WHAT BUSINESS PARTNER MAY NOT ENGAGE. A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it.

History: Enacted March 21, 1872.

§ 2437. IN WHAT HE MAY ENGAGE. A partner may engage in any separate business, except as otherwise provided by the last two sections.

History: Enacted March 21, 1872.

§ 2438. MUST ACCOUNT TO FIRM FOR PROFITS. A general partner transacting business contrary to the provisions of this article may be required by any copartner to account to the partnership for the profits of such business.

History: Enacted March 21, 1872.

ARTICLE IV.

LIABILITY OF PARTNERS.

§ 2442. Liability of partners to third person.
§ 2443. Liability for each other's acts as agents.
§ 2444. Liability of one held out as partner.
§ 2445. No one liable as partner unless held out as such.

§ 2442. **LIABILITY OF PARTNERS TO THIRD PERSONS.** Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners.

History: Enacted March 21, 1872.

§ 2443. **LIABILITY FOR EACH OTHER'S ACTS AS AGENTS.** The liability of general partners for each other's acts is defined by the title on agency.

History: Enacted March 21, 1872.

§ 2444. **LIABILITY OF ONE HELD OUT AS PARTNER.** Any one permitting himself to be represented as a partner, general or special, is liable, as such, to third persons to whom such representation is communicated, and who, on the faith thereof, give credit to the partnership.

History: Enacted March 21, 1872.

§ 2445. **NO ONE LIABLE AS PARTNER UNLESS HELD OUT AS SUCH.** No one is liable as a partner who is not such in fact, except as provided in the last section.

History: Enacted March 21, 1872.

ARTICLE V.

TERMINATION OF PARTNERSHIP.

§ 2449. Duration of partnership.
§ 2450. Total dissolution of partnership.
§ 2451. Partial dissolution.
§ 2452. Partner entitled to dissolution.
§ 2453. Notice of termination.
§ 2454. Notice by change of name.

§ 2449. DURATION OF PARTNERSHIP. If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

History: Enacted March 21, 1872.

§ 2450. TOTAL DISSOLUTION OF PARTNERSHIP. A general partnership is dissolved as to all the partners:

1. By lapse of the time prescribed by agreement for its duration;

2. By the expressed will of any partner, if there is no such agreement;

3. By the death of a partner;

4. By the transfer to a person, not a partner, of the interest of any partner in the partnership property;

5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,

6. By a judgment of dissolution.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 415, held unconstitutional, see history, § 4 ante.

§ 2451. PARTIAL DISSOLUTION. A general partnership may be dissolved, as to himself only, by the expressed

will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

History: Enacted March 21, 1872.

§ 2452. **PARTNER ENTITLED TO DISSOLUTION.** A general partner is entitled to a judgment of dissolution:

1. When he, or another partner, becomes legally incapable of contracting;

2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,

3. When the business of the partnership can be carried on only at a permanent loss.

History: Enacted March 21, 1872.

§ 2453. **NOTICE OF TERMINATION.** The liability of a general partner for the acts of his copartners continues, even after a dissolution of the copartnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business, if a newspaper is there published, to the extent in either case to which such persons part with value in good faith, and in the belief that such partner is still a member of the firm.

History: Enacted March 21, 1872.

§ 2454. **NOTICE BY CHANGE OF NAME.** A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of any partner.

History: Enacted March 21, 1872.

ARTICLE VI.

LIQUIDATION.

§ 2458. Powers of partners after dissolution.
§ 2459. Who may act in liquidation.
§ 2460. Who may not act in liquidation.
§ 2461. Powers of partners in liquidation.
§ 2462. What partner may do in liquidation.

§ 2458. POWERS OF PARTNERS AFTER DISSOLUTION. After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article.

History: Enacted March 21, 1872.

§ 2459. WHO MAY ACT IN LIQUIDATION. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

History: Enacted March 21, 1872.

§ 2460. WHO MAY NOT ACT IN LIQUIDATION. If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith upon credit thereof.

History: Enacted March 21, 1872.

§ 2461. POWERS OF PARTNERS IN LIQUIDATION. A partner authorized to act in liquidation may collect, compromise, or release any debts due to the partnership, pay

or compromise any claims against it, and dispose of the partnership property.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 415, held unconstitutional, see history, § 4 ante.

§ 2462. **WHAT PARTNER MAY DO IN LIQUIDATION.** A partner authorized to act in liquidation, may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm, by an acknowledgment, when an action thereon is barred under the provisions of the Code of Civil Procedure.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 252.

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

§ 2466. Fictitious names, duties of those using.
§ 2467. Style of foreign partnership.
§ 2468. Certificates of partnership, execution, filing, etc.
§ 2469. Change of membership, filing new certificate.
§ 2470. Register of firms to be kept by county clerk.
§ 2471. Certified copies of register, and proof of publication, to be evidence.
§ 2472. Foreign co-partnership, designation of agent.

§ 2466. **FICTITIOUS NAMES, DUTIES OF THOSE USING.** Except as otherwise provided in the next section every person transacting business in this state under a fictitious name and every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which his or its principal place of business is situated, a certificate, stating the name in full and the place of residence of such person and stating the names in full of all the members of such partnership and their places of residence. Such certificate must be published once a week for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper in an adjoining county.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 253; March 23, 1911, Stats. and Amdts. 1911, p. 440.

§ 2467. **STYLE OF FOREIGN PARTNERSHIP.** A commercial or banking partnership, established and transacting business in a place without the United States, may, without filing the certificate or making the publication pre-

scribed in the last section, use in this state the partnership name used by it there, although it be fictitious, or do not show the names of the persons interested as partners in such business.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 253.

§ 2468. CERTIFICATES OF PARTNERSHIP, EXECUTION, FILING, ETC. The certificate filed with the clerk as provided in section twenty-four hundred and sixty-six must be signed by the person therein referred to, or by the partners, as the case may be, and acknowledged before some officer, authorized to take the acknowledgment of conveyances of real property. Where a business is hereafter commenced by a person under a fictitious name or a partnership is hereafter formed, the certificate must be filed and the publication designated in that section must be made within one month after the commencement of such business, or after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership. Where the business has been heretofore conducted under a fictitious name or where the partnership has been heretofore formed, the certificate must be filed and the publication made within six months after the passage of this act. No person doing business under a fictitious name, or his assignee or assignees, nor any persons doing business as partners contrary to the provisions of this article, or their assignee or assignees, shall maintain any action upon or on account of any contract or contracts made, or transactions had, under such fictitious name, or in their partnership name, in any court of this state until the certificate has been filed and the publication has been made as herein required.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 253; by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 416, held unconstitutional, see Kerr's Cyc. C. C. § 4; March 23, 1911, Stats. and Amdts. 1911, p. 441.

§ 2469. **CHANGE OF MEMBERSHIP, FILING NEW CERTIFICATE.** On every change in the members of a partnership transacting business in this state under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, except in the cases mentioned in section twenty-four hundred and sixty-seven, a new certificate must be filed with the county clerk, and a new publication made as required by this article on the formation of such partnership.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 254.

§ 2470. **REGISTER OF FIRMS TO BE KEPT BY COUNTY CLERK.** Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him pursuant to this article, entering in alphabetical order the name of every such person who does business under a fictitious name, and the fictitious name, and the name of every such partnership, and of each partner therein.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 254; March 23, 1911, Stats. and Amdts. 1911, p. 440.

§ 2471. **CERTIFIED COPIES OF REGISTER, AND PROOF OF PUBLICATION, TO BE EVIDENCE.** Copies of the entries of a county clerk, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

History: Enacted March 21, 1872.

§ 2472. **FOREIGN CO-PARTNERSHIP, DESIGNATION OF AGENT.** Every co-partnership, other than those mentioned in section twenty-four hundred and sixty-seven of this

code, domiciled without this state, and having no regular place of business within this state, must, within forty days from the time it commences to do business therein, file in the office of the secretary of state a designation of some person residing within the state upon whom process issued by authority of or under any law of this state, may be served. A copy of such designation, duly certified by the secretary of state, is sufficient evidence of such appointment. Such process may be served on the person so designated, or, in the event that no such person is designated, then on the secretary of state, and the service is a valid service on such co-partnership.

History: Enacted March 21, 1872; amended April 22, 1909, Stats. and Amdts. 1909, p. 1065.

CHAPTER III.

SPECIAL PARTNERSHIP.

Article I. Formation of Partnership, §§ 2477-2485.
II. Powers, Rights, and Duties of the Partners, §§ 2489-2496.
III. Liability of Partners, §§ 2500-2503.
IV. Alteration and Dissolution of the Partnership, §§ 2507-2510.

ARTICLE I.

FORMATION OF PARTNERSHIP.

§ 2477. Formation of special partnership.
§ 2478. Of what to consist.
§ 2479. Certified statement.
§ 2480. Acknowledged and recorded. False statement.
§ 2481. Affidavit as to sums contributed.
§ 2482. No partnership until compliance.
§ 2483. Certificate to be published.
§ 2484. Affidavit of publication filed.
§ 2485. Renewal of special partnership.

§ 2477. FORMATION OF SPECIAL PARTNERSHIP. A special partnership may be formed by two or more persons, in the manner and with the effect prescribed in this chapter, for the transaction of any business except banking or insurance.

History: Enacted March 21, 1872.

§ 2478. **OF WHAT TO CONSIST.** A special partnership may consist of one or more persons called general partners, and one or more persons called special partners.

History: Enacted March 21, 1872.

§ 2479. **CERTIFIED STATEMENT.** Persons desirous of forming a special partnership must severally sign a certificate, stating:

1. The name under which the partnership is to be conducted;
2. The general nature of the business intended to be transacted;
3. The names of all the partners, and their residences, specifying which are general and which are special partners;
4. The amount of capital which each special partner has contributed to the common stock;
5. The periods at which such partnership will begin and end.

History: Enacted March 21, 1872.

§ 2480. **ACKNOWLEDGED AND RECORDED. FALSE STATEMENT.** Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, one to be filed in the clerk's office, and the other recorded in the office of the recorder of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the recorder in whose office it is recorded, must be filed in the clerk's office, and recorded in like manner in the office of the recorder in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

History: Enacted March 21, 1872.

§ 2481. **AFFIDAVIT AS TO SUMS CONTRIBUTED.** An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in the lawful money of the United States, must be filed in the same office with the original certificate.

History: Enacted March 21, 1872.

§ 2482. **NO PARTNERSHIP UNTIL COMPLIANCE.** No special partnership is formed until the provisions of the last five sections are complied with.

History: Enacted March 21, 1872.

§ 2483. **CERTIFICATE TO BE PUBLISHED.** The certificate mentioned in this article, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in the state nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing the certificate. In case such publication is not so made, the partnership must be deemed general.

History: Enacted March 21, 1872.

§ 2484. **AFFIDAVIT OF PUBLICATION FILED.** An affidavit of the making of the publication mentioned in the preceding section, made by the printer, publisher, or chief clerk of the newspaper in which such publication is made, may be filed with the county recorder with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

History: Enacted March 21, 1872.

§ 2485. RENEWAL OF SPECIAL PARTNERSHIP. Every renewal or continuance of a special partnership must be certified, recorded, verified, and published in the same manner as upon its original formation.

History: Enacted March 21, 1872.

ARTICLE II.

POWERS, RIGHTS, AND DUTIES OF THE PARTNERS.

§ 2489. Who to do business.
§ 2490. Special partners may advise.
§ 2491. May loan money. Insolvency.
§ 2492. General partners may sue and be sued.
§ 2493. Withdrawal of capital.
§ 2494. Interest and profits.
§ 2495. Result of withdrawing capital.
§ 2496. Preferential transfer void.

§ 2489. WHO TO DO BUSINESS. The general partners only have authority to transact the business of a special partnership.

History: Enacted March 21, 1872, founded upon § 10, Act March 4, 1870, Stats. 1869-70, p. 124; amended by Code Commission Act March 16, 1901, Stats. and Amdts. 1900-1, p. 816, held unconstitutional, see history, § 4 ante.

§ 2490. SPECIAL PARTNERS MAY ADVISE. A special partner may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management.

History: Enacted March 21, 1872, founded upon § 11, Act March 4, 1870, Stats. 1869-70, p. 124.

§ 2491. MAY LOAN MONEY. INSOLVENCY. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

History: Enacted March 21, 1872, founded upon § 12, Act March 4, 1870, Stats. 1869-70, p. 124.

§ 2492. **GENERAL PARTNERS MAY SUE AND BE SUED.** In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

History: Enacted March 21, 1872, founded upon § 13, Act March 4, 1870, Stats. 1869-70, p. 124.

§ 2493. **WITHDRAWAL OF CAPITAL.** No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership, during its continuance.

History: Enacted March 21, 1872, founded upon § 14, Act March 4, 1870, Stats. 1869-70, p. 124.

§ 2494. **INTEREST AND PROFITS.** A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

History: Enacted March 21, 1872, founded upon § 15, Act March 4, 1870, Stats. 1869-70, p. 124.

§ 2495. **RESULT OF WITHDRAWING CAPITAL.** If a special partner withdraws capital from the firm, contrary to the provisions of this article, he thereby becomes a general partner.

History: Enacted March 21, 1872, founded upon § 16, Act March 4, 1870, Stats. 1869-70, p. 124.

§ 2496. **PREFERENTIAL TRANSFER VOID.** Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give

a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

History: Enacted March 21, 1872, founded upon § 17, Act March 4, 1870, Stats. 1869-70, p. 124.

ARTICLE III.

LIABILITY OF PARTNERS.

§ 2500. Liability of partners.
§ 2501. Of special partners.
§ 2502. Liability for unintentional act.
§ 2503. Who may question existence of special partnership.

§ 2500. LIABILITY OF PARTNERS. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

History: Enacted March 21, 1872, founded upon § 18, Act March 4, 1870, Stats. 1869-70, p. 124.

§ 2501. OF SPECIAL PARTNERS. The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has wilfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable, as a general partner, to all creditors of the firm;

2. If he has wilfully interfered with the business of the firm, except as permitted in article two of this chapter, he is liable in like manner; or,

3. If he has wilfully joined in or assented to an act contrary to any of the provisions of article two of this chapter, he is liable in like manner.

History: Enacted March 21, 1872, founded upon § 19, Act March 4, 1870, Stats. 1869-70, p. 124.

§ 2502. LIABILITY FOR UNINTENTIONAL ACT. When a special partner has unintentionally done any of the

acts mentioned in the last section, he is liable, as a general partner, to any creditor of the firm who has been actually misled thereby to his prejudice.

History: Enacted March 21, 1872, founded upon § 20, Act March 4, 1870, Stats. 1869-70, p. 125.

§ 2503. WHO MAY QUESTION EXISTENCE OF SPECIAL PARTNERSHIP. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by article one of this chapter.

History: Enacted March 21, 1872, founded upon § 21, Act March 4, 1870, Stats. 1869-70, p. 125.

ARTICLE IV.

ALTERATION AND DISSOLUTION.

§ 2507. When special partnership becomes general.
§ 2508. How new special partners may be admitted.
§ 2509. Dissolution of special partnership. Notice.
§ 2510. The name of a special partner not used, unless.

§ 2507. WHEN SPECIAL PARTNERSHIP BECOMES GENERAL. A special partnership becomes general if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the county clerk and recorder with whom the original certificate of the partnership was filed, and notice thereof published as is provided in article one of this chapter for the publication of the certificate.

History: Enacted March 21, 1872, founded upon § 22, Act March 4, 1870, Stats. 1869-70, p. 125.

§ 2508. HOW NEW SPECIAL PARTNERS MAY BE ADMITTED. New special partners may be admitted into a special partnership upon a certificate, stating the names, residences, and contributions to the common stock of each of such partners, signed by each of them, and by the general partners, verified, acknowledged, or proved, according to the provisions of article one of this chapter, and filed with the county clerk and recorder with whom the original certificate of the partnership was filed.

History: Enacted March 21, 1872, founded upon § 23, Act March 4, 1870, Stats. 1869-70, p. 125.

§ 2509. **DISSOLUTION OF SPECIAL PARTNERSHIP. NOTICE.** A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution, by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the county clerk and recorder with whom the original certificate was recorded, and published once in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

History: Enacted March 21, 1872, founded upon § 24, Act March 4, 1870, Stats. 1869-70, p. 125.

§ 2510. **THE NAME OF A SPECIAL PARTNER NOT USED, UNLESS.** The name of a special partner must not be used in the firm name of partnership, unless it be accompanied with the word "limited."

History: Enacted March 21, 1872, founded upon § 25, Act March 4, 1870, Stats. 1869-70, p. 125.

CHAPTER IV.

MINING PARTNERSHIPS.

§ 2511. When a mining partnership exists.
§ 2512. Express agreement not necessary to constitute.
§ 2513. Profits and losses, how shared.
§ 2514. Lien of partners.
§ 2515. Mine. Partnership property.
§ 2516. Partnership not dissolved by sale of interest.
§ 2517. Purchaser takes, subject to liens, unless, etc.
§ 2518. Takes with notice of lien, when.
§ 2519. Contract in writing, when binding.
§ 2520. Owners of majority of shares govern.

§ 2511. WHEN A MINING PARTNERSHIP EXISTS. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

History: Enacted March 21, 1872.

§ 2512. EXPRESS AGREEMENT NOT NECESSARY TO CONSTITUTE. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

History: Enacted March 21, 1872.

§ 2513. PROFITS AND LOSSES, HOW SHARED. A member of a mining partnership shares in the profits and

losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

History: Enacted March 21, 1872.

§ 2514. **LIEN OF PARTNERS.** Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its use. This lien exists notwithstanding there is an agreement among the partners that it must not.

History: Enacted March 21, 1872.

§ 2515. **MINE. PARTNERSHIP PROPERTY.** The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

History: Enacted March 21, 1872.

§ 2516. **PARTNERSHIP NOT DISSOLVED BY SALE OF INTEREST.** One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

History: Enacted March 21, 1872.

§ 2517. **PURCHASER TAKES, SUBJECT TO LIENS, UNLESS, ETC.** A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien.

History: Enacted March 21, 1872.

§ 2518. TAKES WITH NOTICE OF LIEN, WHEN. A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

History: Enacted March 21, 1872.

§ 2519. CONTRACT IN WRITING, WHEN BINDING. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof.

History: Enacted March 21, 1872.

§ 2520. OWNERS OF MAJORITY OF SHARES GOVERN. The decision of the members owning a majority of the shares or interests in a mining partnership binds it in the conduct of its business.

History: Enacted March 21, 1872.

TITLE XI.

INSURANCE.

Chapter I. Insurance in General, §§ 2527-2649.
II. Marine Insurance, §§ 2655-2746.
III. Fire Insurance, §§ 2752-2757.
IV. Life and Health Insurance, §§ 2762-2766.

CHAPTER I.

INSURANCE IN GENERAL.

Article I. Definition of Insurance, § 2527.
II. What May be Insured, §§ 2531-2534.
III. Parties, §§ 2538-2542.
IV. Insurable Interest, §§ 2546-2558.
V. Concealment and Representation, §§ 2561-2583.
VI. The Policy, §§ 2586-2599.
VII. Warranties, §§ 2603-2612.
VIII. Premiums, §§ 2616-2622.
IX. Loss, §§ 2626-2629.
X. Notice of Loss, §§ 2633-2637.
XI. Double Insurance, §§ 2641-2642.
XII. Reinsurance, §§ 2646-2649.

ARTICLE I.

DEFINITION OF INSURANCE.

§ 2527. Insurance, what.

§ 2527. INSURANCE, WHAT. Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability, arising from an unknown or contingent event.

History: Enacted March 21, 1872.

ARTICLE II.

WHAT MAY BE INSURED.

§ 2531. What events may be insured against.
§ 2532. Insurance of lottery or lottery prize unauthorized.
§ 2533. Usual kinds of insurance.
§ 2534. All subject to this chapter.

§ 2531. WHAT EVENTS MAY BE INSURED AGAINST. Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

History: Enacted March 21, 1872.

§ 2532. INSURANCE OF LOTTERY OR LOTTERY PRIZE UNAUTHORIZED. The preceding section does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

History: Enacted March 21, 1872.

§ 2533. **USUAL KINDS OF INSURANCE.** The most usual kinds of insurance are:

1. Marine insurance;
2. Fire insurance;
3. Life insurance;
4. Health insurance; and,
5. Accident insurance.

History: Enacted March 21, 1872.

§ 2534. **ALL SUBJECT TO THIS CHAPTER.** All kinds of insurance are subject to the provisions of this chapter.

History: Enacted March 21, 1872.

ARTICLE III.

PARTIES TO THE CONTRACT.

§ 2538. Designation of parties.
§ 2539. Who may insure.
§ 2540. Who may be insured.
§ 2541. Assignment to mortgagee of thing insured.
§ 2542. New contract between insurer and assignee.

§ 2538. **DESIGNATION OF PARTIES.** The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is called the insured.

History: Enacted March 21, 1872.

§ 2539. **WHO MAY INSURE.** Any one capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, nonresidents, and others.

History: Enacted March 21, 1872.

§ 2540. **WHO MAY BE INSURED.** Any one except a public enemy may be insured.

History: Enacted March 21, 1872.

§ 2541. **ASSIGNMENT TO MORTGAGEE OF THING INSURED.** Unless the policy otherwise provides, where a mortgagor of property effects insurance in his own name providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to a mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his, prior to the loss, which would otherwise

avoid the insurance will have the same effect, although the property is in the hands of the mortgagee, but any act which, under the contract of insurance, is to be performed by the mortgagor, may be performed by the mortgagee therein named, with the same effect as if it had been performed by the mortgagor.

History: Enacted March 21, 1872, amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 416, held unconstitutional, see history, § 593 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 616; amended April 15, 1909, Stats. and Amdts. 1909, p. 914. **In effect** immediately.

§ 2542. **NEW CONTRACT BETWEEN INSURER AND ASSIGNEE.** If an insurer assents to the transfer of an insurance from a mortgager to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgager cannot affect his rights.

History: Enacted March 21, 1872.

ARTICLE IV.

INSURABLE INTEREST.

§ 2546. Insurable interest, what.
§ 2547. In what may consist.
§ 2548. Interest of carrier or depositary.
§ 2549. Mere expectancies.
§ 2550. Measure of interest in property.
§ 2551. Insurance without interest, illegal.
§ 2552. When interest must exist.
§ 2553. Effect of transfer.
§ 2554. Transfer after loss.
§ 2555. Exception in the case of several subjects in one policy.
§ 2556. In case of the death of the insurer.
§ 2557. In the case of transfer between co-tenants.
§ 2558. Void insurance stipulations.

§ 2546. INSURABLE INTEREST, WHAT. Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest.

History: Enacted March 21, 1872.

§ 2547. IN WHAT MAY CONSIST. An insurable interest in property may consist in:

1. An existing interest;
2. An inchoate interest founded on an existing interest; or,
3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

History: Enacted March 21, 1872.

§ 2548. INTEREST OF CARRIER OR DEPOSITARY. A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value.

History: Enacted March 21, 1872.

§ 2549. **MERE EXPECTANCIES.** A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

History: Enacted March 21, 1872.

§ 2550. **MEASURE OF INTEREST IN PROPERTY.** The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

History: Enacted March 21, 1872.

§ 2551. **INSURANCE WITHOUT INTEREST, ILLEGAL.** The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void.

History: Enacted March 21, 1872.

§ 2552. **WHEN INTEREST MUST EXIST.** An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the mean time.

History: Enacted March 21, 1872.

§ 2553. **EFFECT OF TRANSFER.** Except in the cases specified in the next four sections, and in the cases of life, accident, and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

History: Enacted March 21, 1872.

§ 2554. **TRANSFER AFTER LOSS.** A change of interest in a thing insured after the occurrence of an injury

which results in a loss, does not affect the right of the insured to indemnity for the loss.

History: Enacted March 21, 1872.

§ 2555. **EXCEPTION IN THE CASE OF SEVERAL SUBJECTS IN ONE POLICY.** A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

History: Enacted March 21, 1872.

§ 2556. **IN CASE OF THE DEATH OF THE INSURER.** A change of interest, by will or succession, on the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

History: Enacted March 21, 1872.

§ 2557. **IN THE CASE OF TRANSFER BETWEEN COTENANTS.** A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

History: Enacted March 21, 1872.

§ 2558. **VOID INSURANCE STIPULATIONS.** Every stipulation in a policy of insurance for the payment of loss whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering, is void.

History: Enacted March 30, 1874, Code Amdts. 1873-4, p. 255.

ARTICLE V.

CONCEALMENT AND REPRESENTATION.

§ 2561. Concealment, what.
§ 2562. Effect of concealment.
§ 2563. What must be disclosed.
§ 2564. Matters which need not be communicated without inquiry.
§ 2565. Test of materiality.
§ 2566. Matters which each is bound to know.
§ 2567. Waiver of communication.
§ 2568. Interest of insured.
§ 2569. Fraudulent warranty.
§ 2570. Matters of opinion.
§ 2571. Representation, what.
§ 2572. When made.
§ 2573. How interpreted.
§ 2574. Representation as to future.
§ 2575. How may affect policy.
§ 2576. When may be withdrawn.
§ 2577. Time intended by representation.
§ 2578. Representing information.
§ 2579. Falsity.
§ 2580. Effect of falsity.
§ 2581. Materiality.
§ 2582. Application of provisions of this article.
§ 2583. Rescission of insurance contract.

§ 2561. **CONCEALMENT, WHAT.** A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

History: Enacted March 21, 1872.

§ 2562. **EFFECT OF CONCEALMENT.** A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

History: Enacted March 21, 1872.

§ 2563. **WHAT MUST BE DISCLOSED.** Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

History: Enacted March 21, 1872.

§ 2564. **MATTERS WHICH NEED NOT BE COMMUNICATED WITHOUT INQUIRY.** Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows;
2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;
3. Those of which the other waives communication;
4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,
5. Those which relate to a risk excepted from the policy, and which are not otherwise material.

History: Enacted March 21, 1872.

§ 2565. **TEST OF MATERIALITY.** Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

History: Enacted March 21, 1872.

§ 2566. **MATTERS WHICH EACH IS BOUND TO KNOW.** Each party to a contract of insurance is bound to

know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated; and all general usages of trade.

History: Enacted March 21, 1872.

§ 2567. **WAIVER OF COMMUNICATION.** The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

History: Enacted March 21, 1872.

§ 2568. **INTEREST OF INSURED.** Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed by section twenty-five hundred and eighty-seven.

History: Enacted March 21, 1872.

§ 2569. **FRAUDULENT WARRANTY.** An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

History: Enacted March 21, 1872.

§ 2570. **MATTERS OF OPINION.** Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

History: Enacted March 21, 1872.

§ 2571. **REPRESENTATION, WHAT.** A representation may be oral or written.

History: Enacted March 21, 1872.

§ 2572. **WHEN MADE.** A representation may be made at the same time with issuing the policy, or before it.

History: Enacted March 21, 1872.

§ 2573. **HOW INTERPRETED.** The language of a representation is to be interpreted by the same rules as the language of contracts in general.

History: Enacted March 21, 1872.

§ 2574. **REPRESENTATION AS TO FUTURE.** A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

History: Enacted March 21, 1872.

§ 2575. **HOW MAY AFFECT POLICY.** A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

History: Enacted March 21, 1872.

§ 2576. **WHEN MAY BE WITHDRAWN.** A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

History: Enacted March 21, 1872.

§ 2577. **TIME INTENDED BY REPRESENTATION.** The completion of the contract of insurance is the time to which a representation must be presumed to refer.

History: Enacted March 21, 1872.

§ 2578. **REPRESENTING INFORMATION.** When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the sub-

ject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured, whose duty it is to give the intelligence.

History: Enacted March 21, 1872.

§ 2579. **FALSITY.** A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

History: Enacted March 21, 1872.

§ 2580. **EFFECT OF FALSITY.** If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

History: Enacted March 21, 1872.

§ 2581. **MATERIALITY.** The materiality of a representation is determined by the same rule as the materiality of a concealment.

History: Enacted March 21, 1872.

§ 2582. **APPLICATION OF PROVISIONS OF THIS ARTICLE.** The provisions of this article apply as well to a modification of a contract of insurance as to its original formation.

History: Enacted March 21, 1872.

§ 2583. **RESCISSION OF INSURANCE CONTRACT.** Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right may be exercised at any time previous to the commencement of an action on the contract.

History: Enacted March 30, 1874; Code Amdts. 1873-4, p. 255

ARTICLE VI.

THE POLICY.

§ 2586. Policy, what.
§ 2587. What must be specified in a policy.
§ 2588. Whose interest is covered.
§ 2589. Insurance by agent or trustee.
§ 2590. Insurance by part owner.
§ 2591. General terms.
§ 2592. Successive owners.
§ 2593. Transfer of the thing insured.
§ 2594. Open and valued policies.
§ 2595. Open policy, what.
§ 2596. Valued policy, what.
§ 2597. Running policy, what.
§ 2598. Effect of receipt.
§ 2599. Agreement not to transfer.

§ 2586. **POLICY, WHAT.** The written instrument, in which a contract of insurance is set forth, is called a policy of insurance.

History: Enacted March 21, 1872.

§ 2587. **WHAT MUST BE SPECIFIED IN A POLICY.** A policy of insurance must specify:

1. The parties between whom the contract is made;

2. The rate of premium;

3. The property or life insured;

4. The interest of the insured in property insured, if he is not the absolute owner thereof;

5. The risks insured against; and,

6. The period during which the insurance is to continue.

History: Enacted March 21, 1872.

§ 2588. **WHOSE INTEREST IS COVERED.** When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

History: Enacted March 21, 1872.

§ 2589. **INSURANCE BY AGENT OR TRUSTEE.** When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy.

History: Enacted March 21, 1872.

§ 2590. **INSURANCE BY PART OWNER.** To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

History: Enacted March 21, 1872.

§ 2591. **GENERAL TERMS.** When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

History: Enacted March 21, 1872.

§ 2592. **SUCCESSIVE OWNERS.** A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

History: Enacted March 21, 1872.

§ 2593. **TRANSFER OF THE THING INSURED.** The mere transfer of a thing insured does not transfer the policy,

but suspends it until the same person becomes the owner of both the policy and the thing insured.

History: Enacted March 21, 1872.

§ 2594. **OPEN AND VALUED POLICIES.** A policy is either open or valued.

History: Enacted March 21, 1872.

§ 2595. **OPEN POLICY, WHAT.** An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

History: Enacted March 21, 1872.

§ 2596. **VALUED POLICY, WHAT.** A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

History: Enacted March 21, 1872.

§ 2597. **RUNNING POLICY, WHAT.** A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

History: Enacted March 21, 1872.

§ 2598. **EFFECT OF RECEIPT.** An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

History: Enacted March 21, 1872.

§ 2599. **AGREEMENT NOT TO TRANSFER.** An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

History: Enacted March 21, 1872.

ARTICLE VII.

WARRANTIES.

§ 2603. Warranty, express or implied.
§ 2604. Form. [No particular words necessary.]
§ 2605. Warranty must be in policy.
§ 2606. Past, present, and future warranties.
§ 2607. Warranty as to past or present.
§ 2608. Warranty as to the future.
§ 2609. Performance excused.
§ 2610. What acts avoid the policy.
§ 2611. Policy may provide for avoidance.
§ 2612. Breach without fraud.

§ 2603. **WARRANTY, EXPRESS OR IMPLIED.** A warranty is either express or implied.

History: Enacted March 21, 1872.

§ 2604. **FORM. [NO PARTICULAR WORDS NECESSARY.]** No particular form of words is necessary to create a warranty.

History: Enacted March 21, 1872.

§2605. **WARRANTY MUST BE IN POLICY.** Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 255.

§ 2606. **PAST, PRESENT, AND FUTURE WARRANTIES.** A warranty may relate to the past, the present, the future, or to any or all of these.

History: Enacted March 21, 1872.

§ 2607. **WARRANTY AS TO PAST OR PRESENT.** A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

History: Enacted March 21, 1872.

§ 2608. **WARRANTY AS TO THE FUTURE.** A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

History: Enacted March 21, 1872.

§ 2609. **PERFORMANCE EXCUSED.** When, before the time arrives for the perfomance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfil the warranty does not avoid the policy.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 255-6.

§ 2610. **WHAT ACTS AVOID THE POLICY.** The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind.

History: Enacted March 21, 1872.

§ 2611. **POLICY MAY PROVIDE FOR AVOIDANCE.** A policy may declare that a violation of specified provisions thereof shall avoid it, otherwise the breach of an immaterial provision does not avoid the policy.

History: Enacted March 21, 1872.

§ 2612. **BREACH WITHOUT FRAUD.** A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception prevents the policy from attaching to the risk.

History: Enacted March 21, 1872.

ARTICLE VIII.

PREMIUM.

§ 2616. When premium is earned.
§ 2617. Return of premium.
§ 2618. When not allowed.
§ 2619. Return for fraud.
§ 2620. Over-insurance by several insurers.
§ 2621. Contribution.
§ 2622. Proportionate contribution.

§ 2616. **WHEN PREMIUM IS EARNED.** An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.

History: Enacted March 21, 1872.

§ 2617. **RETURN OF PREMIUM.** A person insured is entitled to a return of premium, as follows:

1. To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against.

2. Where the insurance is made for a definite period of time, and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 256.

§ 2618. **WHEN NOT ALLOWED.** If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 256.

§ 2619. **RETURN FOR FRAUD.** A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

History: Enacted March 21, 1872.

§ 2620. **OVER-INSURANCE BY SEVERAL INSURERS.** In case of an over-insurance by several insurers, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

History: Enacted March 21, 1872.

§ 2621. **CONTRIBUTION.** When an over-insurance is effected by simultaneous policies, the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies.

History: Enacted March 21, 1872.

§ 2622. **PROPORTIONATE CONTRIBUTION.** When an over-insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

History: Enacted March 21, 1872.

ARTICLE IX.

LOSS.

§ 2626. Perils, remote and proximate.
§ 2627. Loss incurred in rescue from peril.
§ 2628. Excepted perils.
§ 2629. Negligence and fraud.

§ 2626. PERILS, REMOTE AND PROXIMATE. An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

History: Enacted March 21, 1872.

§ 2627. LOSS INCURRED IN RESCUE FROM PERIL. An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to a peril not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

History: Enacted March 21, 1872.

§ 2628. EXCEPTED PERILS. Where a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril which was not excepted.

History: Enacted March 21, 1872.

§ 2629. **NEGLIGENCE AND FRAUD.** An insurer is not liable for a loss caused by the wilful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 256.

ARTICLE X.

NOTICE OF LOSS.

§ 2633. Notice of loss.
§ 2633a. Time for giving notice of accident, etc.
§ 2634. Preliminary proofs.
§ 2635. Waivers of defects in notice, etc.
§ 2636. Waiver of delay.
§ 2637. Certificate, when dispensed with.

§ 2633. **NOTICE OF LOSS.** In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 256-7.

§ 2633a. **TIME FOR GIVING NOTICE OF ACCIDENT, ETC.** No conditions, stipulations or agreements contained in any application for insurance in any foreign or domestic casualty or accident insurance company, or contained in any policy issued by any such company, or in any way made by any such company, limiting the time within which notice of the accident or injury, or death, shall be given to such company to a period of less than twenty days after the happening of the accident, or injury, or death, shall be valid. Said notice may be given to the company insuring, at any time within twenty days after the happening of the accident, or injury, or death and shall be valid and binding on the company.

History: Enacted June 6, 1913, Stats. and Amdts. 1913, p. 677. **In effect** August 10, 1913.

§ 2634. **PRELIMINARY PROOFS.** When preliminary proof of loss is required by a policy, the insured is not bound

to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

History: Enacted March 21, 1872.

§ 2635. **WAIVERS OF DEFECTS IN NOTICE, ETC.** All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

History: Enacted March 21, 1872.

§ 2636. **WAIVER OF DELAY.** Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

History: Enacted March 21, 1872.

§ 2637. **CERTIFICATE, WHEN DISPENSED WITH.** If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

History: Enacted March 21, 1872.

ARTICLE XI.

DOUBLE INSURANCE.

§ 2641. Double insurance.
§ 2642. Contribution in case of double insurance.

§ 2641. **DOUBLE INSURANCE.** A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

History: Enacted March 21, 1872.

§ 2642. **CONTRIBUTION IN CASE OF DOUBLE INSURANCE.** In case of double insurance, the several insurers are liable to pay losses thereon as follows:

1. In fire insurance, each insurer must contribute ratably towards the loss, without regard to the dates of the several policies.

2. In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies; no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same date, they are deemed to be simultaneous, and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss, is to contribute ratably.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 257.

ARTICLE XII.

REINSURANCE.

§ 2646. Reinsurance, what.
§ 2647. Disclosures required.
§ 2648. Reinsurance presumed to be against liability.
§ 2649. Original insured has no interest.

§ 2646. REINSURANCE, WHAT. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

History: Enacted March 21, 1872.

§ 2647. DISCLOSURES REQUIRED. Where an insurer obtains reinsurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk.

History: Enacted March 21, 1872.

§ 2648. REINSURANCE PRESUMED TO BE AGAINST LIABILITY. A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage.

History: Enacted March 21, 1872.

§ 2649. ORIGINAL INSURED HAS NO INTEREST. The original insured has no interest in a contract of reinsurance.

History: Enacted March 21, 1872.

CHAPTER II.

MARINE INSURANCE.

[Commissioners' note: "Rules respecting marine insurance which are but applications of the principles of international law to this subject are not embraced in these provisions, as they are not within the scope of a municipal statute."]

Article I. Definition of Marine Insurance, § 2655.
II. Insurable Interest, §§ 2659-2665.
III. Concealment, §§ 2669-2672.
IV. Representations, §§ 2676-2677.
V. Implied Warranties, §§ 2681-2688.
VI. The Voyage, and Deviation, §§ 2692-2697.
VII. Loss, §§ 2701-2712.
VIII. Abandonment, §§ 2716-2732.
IX. Measure of Indemnity, §§ 2736-2746.

ARTICLE I.

DEFINITION OF MARINE INSURANCE.

§ 2655. Marine insurance, what.

§ 2655. **MARINE INSURANCE, WHAT.** Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

History: Enacted March 21, 1872.

ARTICLE II.

INSURABLE INTEREST.

§ 2659. Insurable interest in a ship.
§ 2660. Interest reduced by bottomry.
§ 2661. Freightage, what.
§ 2662. Expected freightage.
§ 2663. Interest in expected freightage, what.
§ 2664. Insurable interest in profits.
§ 2665. Insurable interest of charterer.

§ 2659. INSURABLE INTEREST IN A SHIP. The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

History: Enacted March 21, 1872.

§ 2660. INTEREST REDUCED BY BOTTOMRY. The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry.

History: Enacted March 21, 1872.

§ 2661. FREIGHTAGE, WHAT. Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others.

History: Enacted March 21, 1872.

§ 2662. EXPECTED FREIGHTAGE. The owner of a ship has an insurable interest in expected freightage which

he would have certainly earned but for the intervention of a peril insured against.

History: Enacted March 21, 1872.

§ 2663. **INTEREST IN EXPECTED FREIGHTAGE, WHAT.** The interest mentioned in the last section exists, in the case of a charter party, when the ship has broken ground on the chartered voyage, and if a price is to be paid for the carriage of goods when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage.

History: Enacted March 21, 1872.

§ 2664. **INSURABLE INTEREST IN PROFITS.** One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits.

History: Enacted March 21, 1872.

§ 2665. **INSURABLE INTEREST OF CHARTERER.** The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss.

History: Enacted March 21, 1872.

ARTICLE III.

CONCEALMENT.

§ 2669. Information must be communicated.
§ 2670. Material information.
§ 2671. Presumption of knowledge of loss.
§ 2672. Concealments which only affect the risk in question.

§ 2669. INFORMATION MUST BE COMMUNICATED. In marine insurance each party is bound to communicate, in addition to what is required by section two thousand five hundred and sixty-three, all the information which he possesses, material to the risk, except such as is mentioned in section two thousand five hundred and sixty-four, and to state the exact and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose.

History: Enacted March 21, 1872.

§ 2670. MATERIAL INFORMATION. In marine insurance, information of the belief or expectation of a third person, in reference to a material fact, is material.

History: Enacted March 21, 1872.

§ 2671. PRESUMPTION OF KNOWLEDGE OF LOSS. A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication.

History: Enacted March 21, 1872.

§ 2672. CONCEALMENTS WHICH ONLY AFFECT THE RISK IN QUESTION. A concealment in a marine

insurance, in respect to any of the following matters, does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed:

1. The national character of the insured;

2. The liability of the thing insured to capture and detention;

3. The liability to seizure from breach of foreign laws of trade;

4. The want of necessary documents; and,

5. The use of false and simulated papers.

History: Enacted March 21, 1872.

ARTICLE IV.

REPRESENTATIONS.

§ 2676. Effect of intentional falsity.
§ 2677. Representation of expectation.

§ 2676. EFFECT OF INTENTIONAL FALSITY. If a representation, by a person insured by a contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract.

History: Enacted March 21, 1872.

§ 2677. REPRESENTATION OF EXPECTATION. The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance.

History: Enacted March 21, 1872.

ARTICLE V.

IMPLIED WARRANTIES.

§ 2681. Warranty of seaworthiness.
§ 2682. Seaworthiness, what.
§ 2683. When complied with. [Exceptions.]
§ 2684. What things are required to constitute seaworthiness.
§ 2685. Different degrees of seaworthiness at different stages of the voyage.
§ 2686. Unseaworthiness during the voyage.
§ 2687. Seaworthiness for purposes of insurance on cargo.
§ 2688. Neutral papers.

§ 2681. WARRANTY OF SEAWORTHINESS. In every marine insurance upon a ship or freight, or freightage,

or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 257.

§ 2682. **SEAWORTHINESS, WHAT.** A ship is seaworthy when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy.

History: Enacted March 21, 1872.

§ 2683. **WHEN COMPLIED WITH. [EXCEPTIONS.]** An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases:

1. When the insurance is made for a specified length of time, the implied warranty is not complied with, unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and,

2. When the insurance is upon the cargo, which, by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transhipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped, or transhipped, be seaworthy at the commencement of its particular voyage.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 258.

§ 2684. **WHAT THINGS ARE REQUIRED TO CONSTITUTE SEAWORTHINESS.** A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances

and equipments, such as ballast, cables, and anchors, cordage and sails, food, water, fuel, and lights, and other necessary or proper stores and implements for the voyage.

History: Enacted March 21, 1872.

§ 2685. **DIFFERENT DEGREES OF SEAWORTHINESS AT DIFFERENT STAGES OF THE VOYAGE.** Where different portions of the voyage contemplated by a policy differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with if, at the commencement of each portion, the ship is seaworthy with reference to that portion.

History: Enacted March 21, 1872.

§ 2686. **UNSEAWORTHINESS DURING THE VOYAGE.** -When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability from any loss arising therefrom.

History: Enacted March 21, 1872.

§ 2687. **SEAWORTHINESS FOR PURPOSES OF INSURANCE ON CARGO.** A ship which is seaworthy for the purpose of an insurance upon the ship may, nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo.

History: Enacted March 21, 1872.

§ 2688. **NEUTRAL PAPERS.** Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

History: Enacted March 21, 1872.

ARTICLE VI.

THE VOYAGE AND DEVIATION.

§ 2692. Voyage insured, how determined.
§ 2693. Course of sailing, how determined.
§ 2694. Deviation, what.
§ 2695. When proper.
§ 2696. When improper.
§ 2697. Deviation exonerates the insurer.

§ 2692. VOYAGE INSURED, HOW DETERMINED. When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course of sailing fixed by mercantile usage between those places.

History: Enacted March 21, 1872.

§ 2693. COURSE OF SAILING, HOW DETERMINED. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified which, to a master of ordinary skill and discretion, would seem the most natural, direct, and advantageous.

History: Enacted March 21, 1872.

§ 2694. DEVIATION, WHAT. Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage.

History: Enacted March 21, 1872.

§ 2695. WHEN PROPER. A deviation is proper:

1. When caused by circumstances over which neither the master nor the owner of the ship has any control;

2. When necessary to comply with a warranty, or to avoid a peril, whether insured against or not;

3. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril; or,

4. When made in good faith, for the purpose of saving human life, or relieving another vessel in distress.

History: Enacted March 21, 1872.

§ 2696. WHEN IMPROPER. Every deviation not specified in the last section is improper.

History: Enacted March 21, 1872.

§ 2697. DEVIATION EXONERATES THE INSURER. An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation.

History: Enacted March 21, 1872.

ARTICLE VII.

LOSS.

§ 2701. Total and partial loss.
§ 2702. Partial loss.
§ 2703. Actual and constructive total loss.
§ 2704. Actual total loss, what.
§ 2705. Constructive total loss.
§ 2706. Presumed actual loss.
§ 2707. Insurance on cargo, etc., when voyage is broken up.
§ 2708. Cost of reshipment, etc.
§ 2709. When insured is entitled to payment.
§ 2710. Abandonment of goods on insurance of profits [repealed].
§ 2711. Average loss.
§ 2712. Insurance against total loss.

§ 2701. **TOTAL AND PARTIAL LOSS.** A loss may be either total or partial.

History: Enacted March 21, 1872.

§ 2702. **PARTIAL LOSS.** Every loss which is not total is partial.

History: Enacted March 21, 1872.

§ 2703. **ACTUAL AND CONSTRUCTIVE TOTAL LOSS.** A total loss may be either actual or constructive.

History: Enacted March 21, 1872.

§ 2704. **ACTUAL TOTAL LOSS, WHAT.** An actual total loss is caused by:

1. A total destruction of the thing insured;

2. The loss of the thing by sinking, or by being broken up;

3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,

4. Any other event which entirely deprives the owner of the possession, at the port of destination, of the thing insured.

History: Enacted March 21, 1872.

§ 2705. **CONSTRUCTIVE TOTAL LOSS.** A constructive total loss is one which gives to a person insured a right to abandon, under section two thousand seven hundred and seventeen.

History: Enacted March 21, 1872.

§ 2706. **PRESUMED ACTUAL LOSS.** An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case.

History: Enacted March 21, 1872.

§ 2707. **INSURANCE ON CARGO, ETC., WHEN VOYAGE IS BROKEN UP.** When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to procure, in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer thereon continues after they are thus reshipped.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 258.

§ 2708. **COST OF RESHIPMENT, ETC.** In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred

in saving cargo reshipped pursuant to the last section, up to the amount insured.

History: Enacted March 21, 1872.

§ 2709. **WHEN INSURED IS ENTITLED TO PAYMENT.** Upon an actual total loss, a person insured is entitled to payment without notice of abandonment.

History: Enacted March 21, 1872.

§ 2710. **ABANDONMENT OF GOODS ON INSURANCE OF PROFITS** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 258.

§ 2711. **AVERAGE LOSS.** Where it has been agreed that an insurance upon a particular thing, or class of things, shall be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless; but he is liable for his proportion of all general average loss assessed upon the thing insured.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 258.

§ 2712. **INSURANCE AGAINST TOTAL LOSS.** An insurance confined in terms to an actual total loss, does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 259.

ARTICLE VIII.

ABANDONMENT.

§ 2716. Abandonment, what.
§ 2717. When insured may abandon.
§ 2718. Must be unqualified.
§ 2719. When may be made.
§ 2720. Abandonment may be defeated.
§ 2721. How made.
§ 2722. Requisites of notice.
§ 2723. No other cause can be relied on.
§ 2724. Effect.
§ 2725. Waiver of formal abandonment.
§ 2726. Agents of the insured become agents of the insurer.
§ 2727. Acceptance not necessary.
§ 2728. Acceptance conclusive.
§ 2729. Accepted abandonment, irrevocable.
§ 2730. Freightage, how affected by abandonment of ship.
§ 2731. Refusal to accept.
§ 2732. Omission to abandon.

§ 2716. ABANDONMENT, WHAT. Abandonment is the act by which, after a constructive total loss, a person insured by contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured.

History: Enacted March 21, 1872.

§ 2717. WHEN INSURED MAY ABANDON. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against:

1. If more than half thereof in value is actually lost, or would have to be expended to recover it from the peril;

2. If it is injured to such an extent as to reduce its value more than one half;

3. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

4. If the thing insured, being cargo or freightage, the voyage cannot be performed nor another ship procured by the master, within a reasonable time and with reasonable diligence, to forward the cargo, without incurring the like expense or risk. But freightage cannot in any case be abandoned, unless the ship is also abandoned.

History: Enacted March 21, 1872.

§ 2718. **MUST BE UNQUALIFIED.** An abandonment must be neither partial nor conditional.

History: Enacted March 21, 1872.

§ 2719. **WHEN MAY BE MADE.** An abandonment must be made within a reasonable time after the information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion.

History: Enacted March 21, 1872.

§ 2720. **ABANDONMENT MAY BE DEFEATED.** Where the information upon which an abandonment has been made proves incorrect, or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual.

History: Enacted March 21, 1872.

§ 2721. **HOW MADE.** Abandonment is made by giving notice thereof to the insurer, which may be done orally, or in writing.

History: Enacted March 21, 1872.

§ 2722. REQUISITES OF NOTICE. A notice of abandonment must be explicit, and must specify the particular cause of the abandonment, but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss.

History: Enacted March 21, 1872.

§ 2723. NO OTHER CAUSE CAN BE RELIED ON. An abandonment can be sustained only upon the cause specified in the notice thereof.

History: Enacted March 21, 1872.

§ 2724. EFFECT. An abandonment is equivalent to a transfer, by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity.

History: Enacted March 21, 1872.

§ 2725. WAIVER OF FORMAL ABANDONMENT. If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment.

History: Enacted March 21, 1872.

§ 2726. AGENTS OF THE INSURED BECOME AGENTS OF THE INSURER. Upon an abandonment, acts done in good faith by those who were agents of the insured in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit.

History: Enacted March 21, 1872.

§ 2727. ACCEPTANCE NOT NECESSARY. An acceptance of an abandonment is not necessary to the rights of the

insured, and is not to be presumed from the mere silence of the insurer, upon his receiving notice of abandonment.

History: Enacted March 21, 1872.

§ 2728. **ACCEPTANCE CONCLUSIVE.** The acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment.

History: Enacted March 21, 1872.

§ 2729. **ACCEPTED ABANDONMENT, IRREVOCABLE.** An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded.

History: Enacted March 21, 1872.

§ 2730. **FREIGHTAGE, HOW AFFECTED BY ABANDONMENT OF SHIP.** On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned belongs to the insurer of the ship.

History: Enacted March 21, 1872.

§ 2731. **REFUSAL TO ACCEPT.** If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured.

History: Enacted March 21, 1872.

§ 2732. **OMISSION TO ABANDON.** If a person insured omits to abandon, he may nevertheless recover his actual loss.

History: Enacted March 21, 1872.

ARTICLE IX.

MEASURE OF INDEMNITY.

§ 2736. Valuation, when conclusive.
§ 2737. Partial loss.
§ 2738. Profits.
§ 2739. Valuation apportioned.
§ 2740. Valuation applied to profits.
§ 2741. Estimating loss under an open policy.
§ 2742. Arrival of thing damaged.
§ 2743. Labor and expenses.
§ 2744. General average .
§ 2745. Contribution.
§ 2746. One third new for old.

§ 2736. **VALUATION, WHEN CONCLUSIVE.** A valuation in a policy of marine insurance is conclusive between the parties thereto in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

History: Enacted March 21, 1872.

§ 2737. **PARTIAL LOSS.** A marine insurer is liable upon a partial loss, only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured.

History: Enacted March 21, 1872.

§ 2738. **PROFITS.** When profits are separately insured in a contract of marine insurance, the insured is entitled to

recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole.

History: Enacted March 21, 1872.

§ 2739. **VALUATION APPORTIONED.** In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

History: Enacted March 21, 1872.

§ 2740. **VALUATION APPLIED TO PROFITS.** When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

History: Enacted March 21, 1872.

§ 2741. **ESTIMATING LOSS UNDER AN OPEN POLICY.** In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured;

2. The value of cargo is its actual cost to the insured, when laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation or to the fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival;

3. The value of freightage is the gross freightage, exclusive

of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated.

History: Enacted March 21, 1872.

§ 2742. **ARRIVAL OF THING DAMAGED.** If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value which the market price at that port, of the thing so damaged, bears to the market price it would have brought if sound.

History: Enacted March 21, 1872.

§2743. **LABOR AND EXPENSES.** A marine insurer is liable for all the expenses attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby, such expense, in either case, being in addition to a total loss if that afterwards occurs.

History: Enacted March 21, 1872.

§ 2744. **GENERAL AVERAGE.** A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against.

History: Enacted March 21, 1872.

§ 2745. **CONTRIBUTION.** Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separ-

ation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the (the) exercise of that right.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts., 1873-4, p. 259.

§ 2746. ONE THIRD NEW FOR OLD. In the case of a partial loss of a ship or its equipments, the old materials are to be applied towards payment for the new, and whether the ship is new or old, a marine insurer is liable for only two thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one half per cent for each month that it has been fastened to the ship.

History: Enacted March 21, 1872.

CHAPTER III.

FIRE INSURANCE.

§ 2752. False representations [repealed].
§ 2753. Alteration increasing risk.
§ 2754. Alteration not increasing risk.
§ 2755. Acts of the insured.
§ 2756. Measure of indemnity.
§ 2757. Value of interest in policy of insurance, how may be fixed. Total or partial loss.

§ 2752. FALSE REPRESENTATIONS [repealed].

History: Enacted March 21, 1872; reepaled March 30, 1874, Code Amdts., 1873-4, p. 259.

§ 2753. ALTERATION INCREASING RISK. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

History: Enacted March 21, 1872.

§ 2754. ALTERATION NOT INCREASING RISK. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

History: Enacted March 21, 1872.

§ 2755. ACTS OF THE INSURED. A contract of fire insurance is not affected by any act of the insured subse-

quent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss.

History: Enacted March 21, 1872.

§ 2756. **MEASURE OF INDEMNITY.** If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense it would be to the insured at the time of the commencement of the fire to replace the thing lost or injured in the condition in which it was at the time of the injury; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance.

History: Enacted March 21, 1872; amended April 15, 1909, Stats. and Amdts. 1909, p. 914. **In effect** immediately.

§ 2757. **VALUE OF INTEREST IN POLICY OF INSURANCE, HOW MAY BE FIXED. TOTAL OR PARTIAL LOSS.** Whenever the insured desires to have a valuation named in his policy, insuring any building or structure against fire, he may require such building or structure to be examined by the insurer and the value of the insured's interest therein shall be thereupon fixed by the parties. The cost of such examination shall be paid for by the insured. A clause shall be inserted in such policy stating substantially that the value of the insured's interest in such building or structure has been thus fixed. In the absence of any change increasing the risk without the consent of the insurer or of fraud on the part of the insured, then in case of a total loss under such policy, the whole amount so insured upon the insured's interest in such building or structure, as stated in the policy upon which the insurers have received a premium, shall be paid, and in case of a partial loss the full amount of the partial loss shall be so paid, and in case there are two or more policies covering the insured's

interest therein, each policy shall contribute pro rata to the payment of such whole or partial loss. But in no case shall the insurer be required to pay more than the amount thus stated in such policy. This section shall not prevent the parties from stipulating in such policies concerning the repairing, rebuilding or replacing buildings or structures wholly or partially damaged or destroyed.

History: Enacted March 23, 1901, Stats. and Amdts. 1900-1, p. 572.

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

§ 2762. Insurance upon life, when payable.
§ 2763. Insurable interest.
§ 2764. Assignee, etc., of life policy need have no interest.
§ 2765. Notice of transfer.
§ 2766. Measure of indemnity.

§ 2762. INSURANCE UPON LIFE, WHEN PAYABLE. An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

History: Enacted March 21, 1872.

§ 2763. INSURABLE INTEREST. Every person has an insurable interest in the life and health:

1. Of himself;

2. Of any person on whom he depends wholly or in part for education or support;

3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,

4. Of any person upon whose life any estate or interest vested in him depends.

History: Enacted March 21, 1872.

§ 2764. ASSIGNEE, ETC., OF LIFE POLICY NEED HAVE NO INTEREST. A policy of insurance upon life or health may pass by transfer, will, or succession to any

person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

History: Enacted March 21, 1872.

§ 2765. **NOTICE OF TRANSFER.** Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required.

History: Enacted March 21, 1872.

§ 2766. **MEASURE OF INDEMNITY.** Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy.

History: Enacted March 21, 1872.

TITLE XII.

INDEMNITY.

§ 2772. Indemnity, what.
§ 2773. Indemnity for a future wrongful act void.
§ 2774. Indemnity for a past wrongful act valid.
§ 2775. Indemnity extends to acts of agents.
§ 2776. Indemnity to several.
§ 2777. Person indemnifying liable jointly or severally with person indemnified.
§ 2778. Rules for interpreting agreement of indemnity.
§ 2779. When person indemnifying is a surety.
§ 2780. Bail, what.
§ 2781. How regulated.

§ 2772. **INDEMNITY,WHAT.** Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

History: Enacted March 21, 1872.

§ 2773. **INDEMNITY FOR A FUTURE WRONGFUL ACT VOID.** An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 259.

§ 2774. **INDEMNITY FOR A PAST WRONGFUL ACT VALID.** An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful, unless it was a felony.

History: Enacted March 21, 1872.

§ 2775. **INDEMNITY EXTENDS TO ACTS OF AGENTS.** An agreement to indemnify against the acts of a certain person, applies not only to his acts and their consequences, but also to those of his agents.

History: Enacted March 21, 1872.

§ 2776. **INDEMNITY TO SEVERAL.** An agreement to indemnify several persons applies to each, unless a contrary intention appears.

History: Enacted March 21, 1872.

§ 2777. **PERSONS INDEMNIFYING LIABLE JOINTLY OR SEVERALLY WITH PERSON INDEMNIFIED.** One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately, to every person injured by such act.

History: Enacted March 21, 1872.

§ 2778. **RULES FOR INTERPRETING AGREEMENT OF INDEMNITY.** In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable;

2. Upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof;

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith, and in the exercise of a reasonable discretion;

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought

against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so;

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter [,] suffered by him in good faith, is conclusive in his favor against the former;

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former;

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defense upon the merits, which by want of ordinary care he failed to establish in the action.

History: Enacted March 21, 1872.

§ 2779. **WHEN PERSON INDEMNIFYING IS A SURETY.** Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety, for whatever he may pay.

History: Enacted March 21, 1872.

§ 2780. **BAIL, WHAT.** Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 416, held unconstitutional, see history, § 4, ante.

§ 2781. **HOW REGULATED.** The obligations of bail are governed by the statutes specially applicable thereto.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 416, held unconstitutional, see history, § 4 ante.

TITLE XIII.

GUARANTY

Chapter I. Guaranty in General, §§ 2787-2825.
II. Suretyship, §§ 2831-2866.

CHAPTER I.

GUARANTY IN GENERAL.

Article I. Definition of Guaranty, §§ 2787-2788.
II. Creation of Guaranty, §§ 2792-2795.
III. Interpretation of Guaranty, §§ 2799-2802.
IV. Liability of Guarantors, §§ 2806-2810.
V. Continuing Guaranty, §§ 2814, 2815.
VI. Exoneration of Guarantors, §§ 2819-2825.

ARTICLE I.

DEFINITION OF GUARANTY.

§ 2787. Guaranty, what.
§ 2788. Knowledge of principal not necessary to creation of guaranty.

§ 2787. **GUARANTY, WHAT.** A guaraanty is a promise to answer for the debt, default, or miscarriage of another person.

History: Enacted March 21, 1872, founded upon § 12, Act April 19, 1850, Stats. 1850, p. 267.

§ 2788. KNOWLEDGE OF PRINCIPAL NOT NECESSARY TO CREATION OF GUARANTY. A person may become guarantor even without the knowledge or consent of the principal.

History: Enacted March 21, 1872, founded upon Code Napoleon, art. 2014.

ARTICLE II.

CREATION OF GUARANTY.

§ 2792. Necessity of a consideration.
§ 2793. Guaranty to be in writing, etc.
§ 2794. Engagement to answer for obligation of another, when deemed original.
§ 2795. Acceptance of guaranty.

§ 2792. **NECESSITY OF A CONSIDERATION.** Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

History: Enacted March 21, 1872.

§ 2793. **GUARANTY TO BE IN WRITING, ETC.** Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

History: Enacted March 21, 1872, founded upon § 12, Act April 19, 1850, Stats. 1850, p. 267.

§ 2794. **ENGAGEMENT TO ANSWER FOR OBLIGATION OF ANOTHER, WHEN DEEMED ORIGINAL.** A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a dis-

charge from an obligation in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person;

4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale;

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

History: Enacted March 21, 1872.

§ 2795. **ACCEPTANCE OF GUARANTY.** A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

History: Enacted March 21, 1872.

ARTICLE III.

INTERPRETATION OF GUARANTY.

§ 2799. Guaranty of incomplete contract.
§ 2800. Guaranty that an obligation is good or collectable.
§ 2801. Recovery upon such guaranty.
§ 2802. Guarantor's liability upon such guaranty.

§ 2799. GUARANTY OF INCOMPLETE CONTRACT. In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

History: Enacted March 21, 1872.

§ 2800. GUARANTY THAT AN OBLIGATION IS GOOD OR COLLECTABLE. A guaranty to the effect that an obligation is good, or is collectable, imports that the debtor is solvent, and that the demand is collectable by the usual legal proceedings, if taken with reasonable diligence.

History: Enacted March 21, 1872.

§ 2801. RECOVERY UPON SUCH GUARANTY. A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

History: Enacted March 21, 1872.

§ 2802. GUARANTOR'S LIABILITY UPON SUCH GUARANTY. In the cases mentioned in section two thousand eight hundred, the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

History: Enacted March 21, 1872.

ARTICLE IV.

LIABILITY OF GUARANTORS.

§ 2806. Guaranty, how construed.
§ 2807. Liability upon guaranty of payment or performance.
§ 2808. Liability upon guaranty of a conditional obligation.
§ 2809. Obligation of guarantor cannot exceed that of the principal.
§ 2810. Guarantor not liable on an illegal contract.

§ 2806. GUARANTY, HOW CONSTRUED. A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

History: Enacted March 21, 1872.

§ 2807. LIABILITY UPON GUARANTY OF PAYMENT OR PERFORMANCE. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

History: Enacted March 21, 1872.

§ 2808. LIABILITY UPON GUARANTY OF A CONDITIONAL OBLIGATION. Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

History: Enacted March 21, 1872.

§ 2809. OBLIGATION OF GUARANTOR CANNOT EXCEED THAT OF THE PRINCIPAL. The obligation of a guarantor must be neither larger in amount nor in other

respects more burdensome than that of the principal, and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

History: Enacted March 21, 1872, founded upon Code Napoleon, art. 2013.

§ 2810. GUARANTOR NOT LIABLE ON AN ILLEGAL CONTRACT. A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

History: Enacted March 21, 1872.

ARTICLE V.

CONTINUING GUARANTY.

§ 2814. Continuing guaranty, what.
§ 2815. Revocation.

§ 2814. CONTINUING GUARANTY, WHAT. A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

History: Enacted March 21, 1872.

§ 2815. REVOCATION. A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

History: Enacted March 21, 1872.

ARTICLE VI.

EXONERATION OF GUARANTORS.

§ 2819. What dealings with debtor exonerate guarantor.
§ 2820. Void promises.
§ 2821. Rescission of alteration.
§ 2822. Part performance.
§ 2823. Delay of creditor does not discharge guarantor.
§ 2824. Guarantor indemnified by the debtor, not exonerated.
§ 2825. Discharge of principal by act of law does not discharge guarantor.

§ 2819. WHAT DEALINGS WITH DEBTOR EXONERATE GUARANTOR. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

History: Enacted March 21, 1872.

§ 2820. VOID PROMISES. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section.

History: Enacted March 21, 1872.

§ 2821. RESCISSION OF ALTERATION. The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

History: Enacted March 21, 1872.

§ 2822. PART PERFORMANCE. The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, is [in] the same measure as that of the principal, but does not otherwise affect it.

History: Enacted March 21, 1872.

§ 2823. DELAY OF CREDITOR DOES NOT DISCHARGE GUARANTOR. Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

History: Enacted March 21, 1872.

§ 2824. GUARANTOR INDEMNIFIED BY THE DEBTOR, NOT EXONERATED. A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

History: Enacted March 21, 1872.

§ 2825. DISCHARGE OF PRINCIPAL BY ACT OF LAW DOES NOT DISCHARGE GUARANTOR. A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

History: Enacted March 21, 1872.

CHAPTER II.

SURETYSHIP.

Article I. Who Are Sureties, §§ 2831, 2832.
II. Liability of Sureties, §§ 2836-2840.
III. Rights of Sureties, §§ 2844-2850.
IV. Rights of Creditors, § 2854.
V. Letter of Credit, §§ 2858-2866.

ARTICLE I.

WHO ARE SURETIES.

§ 2831. Surety, what.
§ 2832. Apparent principal may show that he is surety.

§ 2831. SURETY, WHAT. A surety is one who at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

History: Enacted March 21, 1872.

§ 2832. APPARENT PRINCIPAL MAY SHOW THAT HE IS SURETY. One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

History: Enacted March 21, 1872.

ARTICLE II.

LIABILITY OF SURETIES.

§ 2836. Limit of surety's obligation.
§ 2837. Rules of interpretation.
§ 2838. Judgment against surety does not alter the relation.
§ 2839. Surety exonerated by performance or offer of performance.
§ 2840. Surety discharged by certain acts of the creditor.

§ 2836. **LIMIT OF SURETY'S OBLIGATION.** A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

History: Enacted March 21, 1872.

§ 2837. **RULES OF INTERPRETATION.** In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

History: Enacted March 21, 1872.

§ 2838. **JUDGMENT AGAINST SURETY DOES NOT ALTER THE RELATION.** Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

History: Enacted March 21, 1872.

§ 2839. **SURETY EXONERATED BY PERFORMANCE OR OFFER OF PERFORMANCE.** Performance of the principal obligation, or an offer of such performance, duly made as provided in this code, exonerates a surety.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts., 1873-4, p. 260.

§ 2840. **SURETY DISCHARGED BY CERTAIN ACTS OF THE CREDITOR.** A surety is exonerated:

1. In like manner with a guarantor;

2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,

3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

History: Enacted March 21, 1872.

ARTICLE III.

RIGHTS OF SURETIES.

§ 2844. Surety has rights of guarantor.
§ 2845. Surety may require the creditor to proceed against the principal.
§ 2846. Surety may compel principal to perform obligations, when due.
§ 2847. A principal bound to reimburse his surety.
§ 2848. The surety acquires the right of the creditor.
§ 2849. Surety entitled to benefit of securities held by creditor.
§ 2850. The property of principal to be taken first.

§ 2844. SURETY HAS RIGHTS OF GUARANTOR. A surety has all the rights of a guarantor, whether he become personally responsible or not.

History: Enacted March 21, 1872.

§ 2845. SURETY MAY REQUIRE THE CREDITOR TO PROCEED AGAINST THE PRINCIPAL. A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

History: Enacted March 21, 1872.

§ 2846. SURETY MAY COMPEL PRINCIPAL TO PERFORM OBLIGATIONS, WHEN DUE. A surety may compel his principal to perform the obligation when due.

History: Enacted March 21, 1872.

§ 2847. A PRINCIPAL BOUND TO REIMBURSE HIS SURETY. If a surety satisfies the principal obligation, or

any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section.

History: Enacted March 21, 1872.

§ 2848. **THE SURETY ACQUIRES THE RIGHT OF THE CREDITOR.** A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and also to require all his cosureties to contribute thereto, without regard to the order of time in which they became such.

History: Enacted March 21, 1872.

§ 2849. **SURETY ENTITLED TO BENEFIT OF SECURITIES HELD BY CREDITOR.** A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a cosurety at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

History: Enacted March 21, 1872.

§ 2850. **THE PROPERTY OF PRINCIPAL TO BE TAKEN FIRST.** Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

History: Enacted March 21, 1872.

ARTICLE IV.

RIGHTS OF CREDITORS.

§ 2854. Creditor entitled to benefit of securities held by surety.

§ 2854. CREDITOR ENTITLED TO BENEFIT OF SECURITIES HELD BY SURETY. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

History: Enacted March 21, 1872.

ARTICLE V.

LETTER OF CREDIT.

§ 2858. Letter of credit, what.
§ 2859. How addressed.
§ 2860. Liability of the writer.
§ 2861. Letters of credit either general or special.
§ 2862. Nature of general letter of credit.
§ 2863. Extent of general letter of credit.
§ 2864. A letter of credit may be a continuing guaranty.
§ 2865. When notice to the writer necessary.
§ 2866. The credit given must agree with the terms of the letter.

§ 2858. LETTER OF CREDIT, WHAT. A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

History: Enacted March 21, 1872.

§ 2859. **HOW ADDRESSED.** A letter of credit may be addressed to several persons in succession.

History: Enacted March 21, 1872.

§ 2860. **LIABILITY OF THE WRITER.** The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

History: Enacted March 21, 1872.

§ 2861. **LETTERS OF CREDIT EITHER GENERAL OR SPECIAL.** A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

History: Enacted March 21, 1872.

§ 2862. **NATURE OF GENERAL LETTER OF CREDIT.** A general letter of credit gives any person to whom it may be shown authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

History: Enacted March 21, 1872.

§ 2863. **EXTENT OF GENERAL LETTER OF CREDIT.** Several persons may successively give credit upon a general letter.

History: Enacted March 21, 1872.

§ 2864. **A LETTER OF CREDIT MAY BE A CONTINUING GUARANTY.** If the parties to a letter of credit appear, by its terms, to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subse-

quently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty.

History: Enacted March 21, 1872.

§ 2865. **WHEN NOTICE TO THE WRITER NECESSARY.** The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

History: Enacted March 21, 1872.

§ 2866. **THE CREDIT GIVEN MUST AGREE WITH THE TERMS OF THE LETTER.** If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

History: Enacted March 21, 1872.

TITLE XIV.

LIEN

[**Commissioners' note.** "Although the arrangement of this subject is novel, its propriety and advantages will be perceived at a glance. Mortgages are liens, and, under the provisions of this code, nothing more. They are subject, therefore, to all the general rules of liens."]

Chapter I. Liens in General, §§ 2872-2913.
II. Mortgage, §§ 2920-2973.
III. Pledge, §§ 2986-3011.
IV. Bottomry, §§ 3017-3029.
V. Respondentia, §§ 3036-3040.
VI. Other Liens, §§ 3046-3065.
VII. Stoppage in Transit, §§ 3076-3080.

CHAPTER I.

LIENS IN GENERAL

Article I. Definition of Liens, §§ 2872-2877.
II. Creation of Liens, §§ 2881-2884.
III. Effect of Liens, §§ 2888-2892.
IV. Priority of Liens, §§ 2897-2899.
V. Redemption from Liens, §§ 2903-2905.
VI. Extinction of Liens, §§ 2909-2913.

ARTICLE I.

DEFINITION OF LIEN.

§ 2872. Lien, what.
§ 2873. Liens, general or special.
§ 2874. General lien, what.
§ 2875. Special lien, what.
§ 2876. Prior liens.
§ 2877. Contracts subject to provisions of this chapter.

§ 2872. **LIEN, WHAT.** A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.

History: Enacted March 21, 1872; amended February 15, 1878, Code Amdts. 1877-8, p. 88.

§ 2873. **LIENS, GENERAL OR SPECIAL.** Liens are either general or special.

History: Enacted March 21, 1872.

§ 2874. **GENERAL LIEN, WHAT.** A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

History: Enacted March 21, 1872.

§ 2875. **SPECIAL LIEN, WHAT.** A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such oblitions [obligations] as may be incidental thereto.

History: Enacted March 21, 1872.

§ 2876. **PRIOR LIENS.** Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

History: Enacted March 21, 1872.

§ 2877. **CONTRACTS SUBJECT TO PROVISIONS OF THIS CHAPTER.** Contracts of mortgage, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter.

History: Enacted March 21, 1872.

ARTICLE II.

CREATION OF LIENS.

§ 2881. Lien, how created.
§ 2882. No lien for claim not due.
§ 2883. Lien on future interest.
§ 2884. Lien may be created by contract.

§ 2881. LIEN, HOW CREATED. A lien is created:

1. By contract of the parties; or,
2. By operation of law.

History: Enacted March 21, 1872.

§ 2882. NO LIEN FOR CLAIM NOT DUE. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

History: Enacted March 21, 1872.

§ 2883. LIEN ON FUTURE INTEREST. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

History: Enacted March 21, 1872.

§ 2884. LIEN MAY BE CREATED BY CONTRACT. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

History: Enacted March 21, 1872.

ARTICLE III.

EFFECT OF LIENS.

§ 2888. Lien, or contract for lien, transfers no title.
§ 2889. Certain contracts void.
§ 2890. Creation of lien does not imply personal obligation.
§ 2891. Extent of lien.
§ 2892. Holder of lien not entitled to compensation.

§ 2888. LIEN, OR CONTRACT FOR LIEN, TRANSFERS NO TITLE. Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

History: Enacted March 21, 1872.

§ 2889. CERTAIN CONTRACTS VOID. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

History: Enacted March 21, 1872.

§ 2890. CREATION OF LIEN DOES NOT IMPLY PERSONAL OBLIGATION. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

History: Enacted March 21, 1872.

§ 2891. EXTENT OF LIEN. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

History: Enacted March 21, 1872.

§ 2892. **HOLDER OF LIEN NOT ENTITLED TO COMPENSATION.** One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections eighteen hundred and ninety-two and eighteen hundred and ninety-three.

History: Enacted March 21, 1872.

ARTICLE IV.

PRIORITY OF LIENS.

§ 2897. Priority of liens.
§ 2898. Priority of mortgage for price.
§ 2899. Order of resort to different funds.

§ 2897. PRIORITY OF LIENS. Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

History: Enacted March 21, 1872.

§ 2898. PRIORITY OF MORTGAGE FOR PRICE. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

History: Enacted March 21, 1872.

§ 2899. ORDER OF RESORT TO DIFFERENT FUNDS. Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

1. To the things upon which he has an exclusive lien;

2. To the things which are subject to the fewest subordinate liens;

3. In like manner inversely to the number of subordinate liens upon the same thing; and,

4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had—

(1.) To the things which have not been transferred since the prior lien was created;

(2.) To the things which have been so transferred without a valuable consideration; and,

(3.) To the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

History: Enacted March 21, 1872.

ARTICLE V.

REDEMPTION FROM LIEN.

§ 2903. Right to redeem. Subrogation.
§ 2904. Rights of inferior lienor.
§ 2905. Redemption from lien, how made.

§ 2903. RIGHT TO REDEEM. SUBROGATION. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed, and, by such redemption, becomes subrogated to all the benefits of the lien, as against all owners of other interests in the property, except in so far as he was bound to make such redemption for their benefit.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 417, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 617.

§ 2904. RIGHTS OF INFERIOR LIENOR. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

History: Enacted March 21, 1872.

§ 2905. REDEMPTION FROM LIEN, HOW MADE. Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

History: Enacted March 21, 1872.

ARTICLE VI.

EXTINCTION OF LIENS.

§ 2909. Lien deemed accessory to the act whose performance it secures.
§ 2910. Extinction by sale or conversion.
§ 2911. Lien extinguished by lapse of time under statute of limitations.
§ 2912. Apportionment of lien.
§ 2913. When restoration extinguishes lien.

§ 2909. LIEN DEEMED ACCESSORY TO THE ACT WHOSE PERFORMANCE IT SECURES. A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

History: Enacted March 21, 1872.

§ 2910. EXTINCTION BY SALE OR CONVERSION. The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

History: Enacted March 21, 1872.

§ 2911. LIEN EXTINGUISHED BY LAPSE OF TIME UNDER STATUTE OF LIMITATIONS. A lien is extinguished by the lapse of the time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation.

History: Enacted March 21, 1872.

§ 2912. **APPORTIONMENT OF LIEN.** The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

History: Enacted March 21, 1872.

§ 2913. **WHEN RESTORATION EXTINGUISHES LIEN.** The voluntary restoration of property to its owner by the holder of a lien thereon dependent upon possession extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons, subsequently acquiring a title to the property, or a lien thereon, in good faith, and for value.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 260; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 417, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 617.

CHAPTER II.

MORTGAGE.

Article I. Mortgages in General, §§ 2920-2942.
II. Mortgages of Real Property, §§ 2947-2952.
III. Mortgages of Personal Property, §§ 2955-2973.

ARTICLE I.

MORTGAGES IN GENERAL.

§ 2920. Mortgage, what.
§ 2921. Property adversely held may be mortgaged.
§ 2922. To be in writing.
§ 2923. Lien of a mortgage, when special.
§ 2924. Transfer, when mortgage, when pledge.
§ 2925. Transfer made subject to defeasance may be proved.
§ 2926. Mortgage, on what a lien.
§ 2927. Mortgage does not entitle mortgagee to possession.
§ 2928. Mortgage not a personal obligation.
§ 2929. Waste.
§ 2930. Subsequently acquired title inures to mortgagee.
§ 2931. Foreclosure.
§ 2932. Power of sale.
§ 2933. Power of attorney to execute.
§ 2934. Recording assignment of mortgage.
§ 2935. Not notice to mortgager.
§ 2936. Mortgage passes by assignment of debt.
§ 2937. Time allowed for filing mortgage for record [repealed].
§ 2938. Mortgage, how discharged.
§ 2939. Same. [On certificate].
§ 2939½. Same. How foreign executors and administrators may satisfy mortgages.
§ 2940. Same. [Record and reference.]
§ 2941. Duty of mortgagee on satisfaction of mortgage.
§ 2942. Provisions of this chapter do not affect bottomry or respondentia.

§ 2920. **MORTGAGE, WHAT.** Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

History: Enacted March 21, 1872.

§ 2921. **PROPERTY ADVERSELY HELD MAY BE MORTGAGED.** A mortgage may be created upon property held adversely to the mortgager.

History: Enacted March 21, 1872.

§ 2922. **TO BE IN WRITING.** A mortgage can be created, renewed, or extended, only by writing, executed with the formalities required in the case of a grant of real property.

History: Enacted March 21, 1872.

§ 2923. **LIEN OF A MORTGAGE, WHEN SPECIAL.** The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

History: Enacted March 21, 1872.

§ 2924. **TRANSFER, WHEN MORTGAGE, WHEN PLEDGE.** Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 260.

§ 2925. **TRANSFER MADE SUBJECT TO DEFEASANCE MAY BE PROVED.** The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved

(except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

History: Enacted March 21, 1872.

§ 2926. **MORTGAGE, ON WHAT A LIEN.** A mortgage is a lien upon everything that would pass by a grant of the property.

History: Enacted March 21, 1872.

§ 2927. **MORTGAGE DOES NOT ENTITLE MORTGAGEE TO POSSESSION.** A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage the mortgager may agree to such change of possession without a new consideration.

History: Enacted March 21, 1872.

§ 2928. **MORTGAGE NOT A PERSONAL OBLIGATION.** A mortgage does not bind the mortgager personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

History: Enacted March 21, 1872.

§ 2929. **WASTE.** No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

History: Enacted March 21, 1872.

§ 2930. **SUBSEQUENTLY ACQUIRED TITLE INURES TO MORTGAGEE.** Title acquired by the mortgager subsequent to the execution of the mortgage, inures

to the mortgagee as security for the debt, in like manner as if acquired before the execution.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 260.

§ 2931. **FORECLOSURE.** A mortgagee may foreclose the right of redemption of the mortgager in the manner prescribed by the Code of Civil Procedure.

History: Enacted March 21, 1872.

§ 2932. **POWER OF SALE.** A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

History: Enacted March 21, 1872.

§ 2933. **POWER OF ATTORNEY TO EXECUTE.** A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

History: Enacted March 21, 1872.

§ 2934. **RECORDING ASSIGNMENT OF MORTGAGE.** An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 261.

§ 2935. **NOT NOTICE TO MORTGAGER.** When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument,

designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgager, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond, or other instrument.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 261.

§ 2936. **MORTGAGE PASSES BY ASSIGNMENT OF DEBT.** The assignment of a debt secured by mortgage carries with it the security.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 417, held unconstitutional, see history, § 4 ante.

§ 2937. **TIME ALLOWED FOR FILING MORTGAGE FOR RECORD** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 261.

§ 2938. **MORTGAGE, HOW DISCHARGED.** A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgment in form substantially as follows: "Signed and acknowledged before me, this ..... day of ....., in the year ..... A B, Recorder."

History: Enacted March 21, 1872.

§ 2939. **SAME. [ON CERTIFICATE.]** A recorded mortgage, if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives

or assigns, acknowledged or proved and certified as prescribed by the chapter on "recording transfers," stating that the mortgage has been paid, satisfied, or discharged.

History: Enacted March 21, 1872.

§ 2939½. **SAME. HOW FOREIGN EXECUTORS AND ADMINISTRATORS MAY SATISFY MORTGAGES.** Foreign executors, administrators and guardians may satisfy mortgages upon the records of any county in this state, upon producing and recording in the office of the county recorder of the county in which such mortgage is recorded, a duly certified and authenticated copy of their letters testamentary, or of administration or of guardianship, and which certificate or authentication shall also recite that said letters have not been revoked.

History: Enacted March 8, 1905, Stats. and Amdts. 1905, p. 28; amended May 19, 1913, Stats. and Amdts. 1913, p. 216. **In effect** April 10, 1913.

§ 2940. **SAME. [RECORD AND REFERENCE.]** A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.

History: Enacted March 21, 1872.

§ 2941. **DUTY OF MORTGAGEE ON SATISFACTION OF MORTGAGE.** When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on the demand of the mortgager, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any

mortgagee, or assignee of such mortgagee, who refuses to execute, acknowledge, and deliver to the mortgager the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgager, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 261; April 15, 1880, Code Amdts. 1880 (C. C. pt.), p. 11.

§ 2942. **PROVISIONS OF THIS CHAPTER DO NOT AFFECT BOTTOMRY OR RESPONDENTIA.** Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter.

History: Enacted March 21, 1872.

ARTICLE II.

MORTGAGES OF REAL PROPERTY.

§ 2947. What real property may be mortgaged.
§ 2948. Form of mortgage.
§ 2949. What must be recorded as a mortgage [repealed].
§ 2950. Defeasance, to affect grant absolute on its face, must be recorded.
§ 2951. By whom paid after property passes by succession or will [repealed].
§ 2952. May be recorded.

§ 2947. WHAT REAL PROPERTY MAY BE MORTGAGED. Any interest in real property which is capable of being transferred may be mortgaged.

History: Enacted March 21, 1872.

§ 2948. FORM OF MORTGAGE. A mortgage of real property may be made in substantially the following form:

This mortgage, made the ..... day of ....., in the year ....., by A B, of ....., mortgager, to C D, of ....., mortgagee, witnesseth:

That the mortgager mortgages to the mortgagee [here describe the property], as security for the payment to him of ..... dollars, on [or before] the ..... day of ....., in the year ....., with interest thereon [or as security for the payment of an obligation, describing it, etc.]. A. B.

History: Enacted March 21, 1872.

§ 2949. WHAT MUST BE RECORDED AS A MORTGAGE [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts., 1873-4, p. 262.

§ 2950. **DEFEASANCE, TO AFFECT GRANT ABSOLUTE ON ITS FACE, MUST BE RECORDED.** When a grant of real property purports to be an absolute conveyance, but is intended to be defeasable on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.

History: Enacted March 21, 1872.

§ 2951. **BY WHOM PAID AFTER PROPERTY PASSES BY SUCCESSION OR WILL** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 262.

§ 2952. **MAY BE RECORDED.** Mortgages of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect, as grants thereof.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 262.

ARTICLE III.

MORTGAGE OF PERSONAL PROPERTY.

§ 2955. What personal property may be mortgaged.
§ 2956. Form of personal mortgage.
§ 2957. When void as to third persons.
§ 2958. Mortgage of ships, when void as to third persons.
§ 2959. Where recorded.
§ 2960. Property in transit, where to be recorded.
§ 2961. Property of a common carrier, where to be recorded.
§ 2962. Recorded in different places.
§ 2963. Personal mortgage may be recorded.
§ 2964. Certified copies may be recorded, when.
§ 2965. Property exempt from effect of mortgage, when.
§ 2966. May be taken by mortgagee as a pledge, when.
§ 2967. How foreclosed.
§ 2968. Mortgaged property may be levied upon.
§ 2969. Limitations on right of levy.
§ 2970. Distribution of proceeds of sale under process.
§ 2971. Certain sections not applicable to mortgage of certain ships.
§ 2972. Continuance of lien of mortgage on crops.
§ 2973. Mortgages on personal property, validity of certain.

§ 2955. WHAT PERSONAL PROPERTY MAY BE MORTGAGED. Mortgages may be made upon all growing crops, including grapes and fruit, and upon any and all kinds of personal property, except the following:

1. Personal property not capable of manual delivery;
2. Articles of wearing apparel and personal adornment;
3. The stock in trade of a merchant.

History: Enacted March 21, 1872; amended April 3, 1876, Code Amdts. 1875-6, p. 79; April 1, 1878, Code Amdts. 1877-8, p. 88; February 28, 1887, Stats. and Amdts. 1887, p. 5; March 7, 1893, Stats. and Amdts. 1893, p. 84; March 16, 1895, Stats. and Amdts. 1895, p. 57; March 9, 1897, Stats. and Amdts. 1897, p. 95; March 3,

1903, Stats. and Amdts. 1903, p. 78; March 3. 1905, Stats. and Amdts. 1905, p. 36; March 22, 1907, Stats. and Amdts. 1907, p. 886, Kerr's Stats. and Amdts. 1906-7, p. 427; February 20, 1909, Stats. and Amdts. 1909, p. 34.

§ 2956. **FORM OF PERSONAL MORTGAGE.** A mortgage of personal property may be made in substantially the following form:

This mortgage, made the ..... day of ....., in the year ....., by A B, of ....., by occupation a ....., mortgager, to C D, of ....., by occupation a ....., mortgagee, witnesseth:

That the mortgager mortgages to the mortgagee [here describe the property], as security for the payment to him of ..... dollars, on [or before] the ..... day of ....., in the year ....., with interest thereon [or, as security for the payment of a note or obligation, describing it, etc.].

A. B.

History: Enacted March 21, 1872.

§ 2957. **WHEN VOID AS TO THIRD PERSONS.** A mortgage of personal property is void as against creditors of the mortgager and subsequent purchasers and encumbrancers of the property in good faith and for value, unless:

1. It is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors;

2. It is acknowledged or proved, certified, and recorded in like manner as grants of real property.

History: Enacted March 21, 1872.

§ 2958. **MORTGAGE OF SHIPS, WHEN VOID AS TO THIRD PERSONS.** A mortgage of any vessel or part of any vessel under the flag of the United States is void as against any person (other than the mortgager, his heirs, and

devisee, and persons having actual notice thereof), unless the mortgage is recorded in the office of the collector of customs where such vessel is registered or enrolled.

History: Enacted March 21, 1872.

§ 2959. **WHERE RECORDED.** A mortgage of personal property must be recorded in the office of the county recorder of the county in which the mortgager resides, if the mortgager be a resident of this state, and it shall also be recorded in the county in which the property mortgaged is situated, or to which it may be removed.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 417, held unconstitutional, see history, § 593 ante; amended March 22, 1907, Stats. and Amdts. 1907, p. 853, Kerr's Stats. and Amdts. 1906-7, p. 428. **In effect** immediately.

§ 2960. **PROPERTY IN TRANSIT, WHERE TO BE RECORDED.** For the purposes of this article, property in transit from the possession of the mortgagee to the county of the residence of the mortgager, or to a location for use, is, during a reasonable time for such transportation, to be taken as situated in the county in which the mortgager resides, or where it is intended to be used.

History: Enacted March 21, 1872.

§ 2961. **PROPERTY OF A COMMON CARRIER, WHERE TO BE RECORDED.** For a like purpose, personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

History: Enacted March 21, 1872.

§ 2962. **RECORDED IN DIFFERENT PLACES.** A single mortgage of personal property, embracing several

things of such character or so situated that by the provisions of this article separate mortgages upon them would be required to be recorded in different places, is only valid in respect to the things as to which it is duly recorded.

History: Enacted March 21, 1872.

§ 2963. **PERSONAL MORTGAGE MAY BE RECORDED.** Except as it is otherwise in this article provided, mortgages of personal property may be acknowledged, or proved and certified, recorded in like manner and with like effect as grants of real property; but they must be recorded in books kept for personal mortgages exclusively.

History: Enacted March 21, 1872.

§ 2964. **CERTIFIED COPIES MAY BE RECORDED, WHEN.** A certified copy of a mortgage of personal property once recorded may be recorded in any other county, and when so recorded the record thereof has the same force and effect as though it was of the original mortgage.

History: Enacted March 21, 1872.

§ 2965. **PROPERTY EXEMPT FROM EFFECT OF MORTGAGE, WHEN.** When personal property mortgaged is thereafter removed from the county in which it is situated, the lien of the mortgage shall not be affected thereby for thirty days after such removal; but, after the expiration of such thirty days, the property mortgaged is exempted from the operation of the mortgage, except as between the parties thereto, until either:

1. The mortgagee causes the mortgage to be recorded in the county to which the property has been removed; or

2. The mortgagee takes possession of the property as prescribed in the next section.

History: Enacted March 21, 1872; amended February 22, 1909, Stats. and Amdts. 1909, p. 44.

§ 2966. **MAY BE TAKEN BY MORTGAGEE AS A PLEDGE, WHEN.** If the mortgager voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due.

History: Enacted March 21, 1872.

§ 2967. **HOW FORECLOSED.** A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgager's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the title on "pledge," or by proceedings under the code of civil procedure.

History: Enacted March 21, 1872.

§ 2968. **MORTGAGE PROPERTY MAY BE LEVIED UPON.** Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of the mortgager.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 417, held unconstitutional, see history, § 4 ante.

§ 2969. **LIMITATIONS ON RIGHT OF LEVY.** Before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county clerk or treasurer, payable to the order of the mortgagee.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 417, held unconstitutional, see history, § 4 ante.

§ 2970. **DISTRIBUTION OF PROCEEDS OF SALE UNDER PROCESS.** When the property thus taken is sold

under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

History: Enacted March 21, 1872.

§ 2971. **CERTAIN SECTIONS NOT APPLICABLE TO MORTGAGE OF CERTAIN SHIPS.** Sections twenty-nine hundred and fifty-seven, twenty-nine hundred and fifty-nine, twenty-nine hundred and sixty, twenty-nine hundred and sixty-one, twenty-nine hundred and sixty-two, twenty-nine hundred and sixty-three, twenty-nine hundred and sixty-four, twenty-nine hundred and sixty-five, and twenty-nine hundred and sixty-six do not apply to any mortgage of a ship or part of a ship under the flag of the United States.

History: Enacted March 21, 1872.

§ 2972. **CONTINUANCE OF LIEN OF MORTGAGE ON CROP.** The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgager.

History: Enacted April 1, 1878, Code Amdts. 1877-8, p. 89.

§ 2973. **MORTGAGES ON PERSONAL PROPERTY, VALIDITY OF CERTAIN.** Mortgages of personal property, other than that mentioned in section twenty-nine hundred and fifty-five, and mortgages not made in conformity with the provisions of this article, are nevertheless valid between the parties, their heirs, legatees, and personal representatives, and persons who, before parting with value, have actual notice thereof.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 418, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 617.

CHAPTER III.

PLEDGE.

§ 2986. Pledge, what.
§ 2987. When contract is to be deemed a pledge.
§ 2988. Delivery essential to validity of pledge.
§ 2989. Increase of thing.
§ 2990. Lienor may pledge property to extent of his lien.
§ 2991. Real owner cannot defeat pledge of property transferred to apparent owner for purpose of pledge.
§ 2992. Pledge-lender, what.
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§ 3003. Waiver of notice of sale.
§ 3004. Waiver of demand.
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§ 3006. Pledgee's sale of securities.
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§ 3008. Surplus to be paid to pledgeor.
§ 3009. Pledgee may retain.
§ 3010. Pledgee's purchase of property pledged.
§ 3011. Pledgee may foreclose right of redemption.

§ 2986. PLEDGE, WHAT. Pledge is a deposit of personal property by way of security for the performance of another act.

History: Enacted March 21, 1872.

§ 2987. WHEN CONTRACT IS TO BE DEEMED A PLEDGE. Every contract by which the possession of per-

sonal property is transferred, as security only, is to be deemed a pledge.

History: Enacted March 21, 1872.

§ 2988. **DELIVERY ESSENTIAL TO VALIDITY OF PLEDGE.** The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge-holder, as hereafter prescribed.

History: Enacted March 21, 1872.

§ 2989. **INCREASE OF THING.** The increase of property pledged is pledged with the property.

History: Enacted March 21, 1872.

§ 2990. **LIENOR MAY PLEDGE PROPERTY TO EXTENT OF HIS LIEN.** One who has a lien upon property may pledge it to the extent of his lien.

History: Enacted March 21, 1872.

§ 2991. **REAL OWNER CANNOT DEFEAT PLEDGE OF PROPERTY TRANSFERRED TO APPARENT OWNER FOR PURPOSE OF PLEDGE.** One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

History: Enacted March 21, 1872.

§ 2992. **PLEDGE-LENDER, WHAT.** Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgeor for himself, except as hereinafter stated.

History: Enacted March 21, 1872.

§ 2993. **PLEDGE-HOLDER, WHAT.** A pledgeor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge-holder.

History: Enacted March 21, 1872.

§ 2994. **WHEN PLEDGE-LENDER MAY WITHDRAW PROPERTY PLEDGED.** One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgeor for himself might, and if he receives from the debtor a consideration for the pledge he cannot withdraw it without his consent.

History: Enacted March 21, 1872.

§ 2995. **OBLIGATIONS OF PLEDGE-HOLDER.** A pledge-holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge-holder can do so only by giving reasonable notice to the pledgeor and pledgee to appoint a new pledge-holder, and in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

History: Enacted March 21, 1872.

§ 2996. **PLEDGE-HOLDER MUST ENFORCE RIGHTS OF PLEDGEE.** A pledge-holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

History: Enacted March 21, 1872.

§ 2997. **OBLIGATION OF PLEDGEE AND PLEDGE-HOLDER, FOR REWARD.** A pledgee, or a pledge-holder for reward, assumes the duties and liabilities of a depositary for reward.

History: Enacted March 21, 1872.

§ 2998. GRATUITOUS PLEDGE-HOLDER. A gratuitous pledge-holder assumes the duties and liabilities of a gratuitous depositary.

History: Enacted March 21, 1872.

§ 2999. DEBTOR'S MISREPRESENTATION OF VALUE OF PLEDGE. Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

History: Enacted March 21, 1872, founded upon Civ. Code La., art. 3141.

§ 3000. WHEN PLEDGEE MAY SELL. When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

History: Enacted March 21, 1872.

§ 3001. WHEN PLEDGEE MUST DEMAND PERFORMANCE. Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 262.

§ 3002. NOTICE OF SALE TO PLEDGEOR. A pledgee must give actual notice to the pledgeor of the time and place at which the property pledged will be sold, at such a reason-

able time before the sale as will enable the pledgeor to attend.

History: Enacted March 21, 1872.

§ 3003. **WAIVER OF NOTICE OF SALE.** Notice of sale may be waived by a pledgeor at any time; but is not waived by a mere waiver of demand of performance.

History: Enacted March 21, 1872.

§ 3004. **WAIVER OF DEMAND.** A debtor or pledgeor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due; but cannot waive it in any other manner except by contract.

History: Enacted March 21, 1872.

§ 3005. **SALE MUST BE BY AUCTION.** The sale by pledgee, of property pledged, must be made by public auction, in the manner and upon the notice of sale of personal property under execution.

History: Enacted March 21, 1872, amended April 16, 1909, Stats. and Amdts. 1909, p. 972.

§ 3006. **PLEDGEE'S SALE OF SECURITIES.** A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states, or corporations; but he may collect the same when due.

History: Enacted March 21, 1872.

§ 3007. **SALE ON THE DEMAND OF THE PLEDGEOR.** Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgeor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

History: Enacted March 21, 1872.

§ 3008. **SURPLUS TO BE PAID TO PLEDGEOR.** After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgeor, on demand.

History: Enacted March 21, 1872.

§ 3009. **PLEDGEE MAY RETAIN.** When property pledged is sold by order of the pledgeor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

History: Enacted March 21, 1872; amended March 30, 1874. Code Amdts. 1873-4, p. 262.

§ 3010. **PLEDGEE'S PURCHASE OF PROPERTY PLEDGED.** Whenever property pledged is sold at public auction, in the manner provided by section three thousand and five of this code, the pledgee or pledge-holder may purchase said property at such sale.

History: Enacted March 21, 1872; amended March 8, 1895, Stats. and Amdts. 1895, p. 26.

§ 3011. **PLEDGEE MAY FORECLOSE RIGHT OF REDEMPTION.** Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

History: Enacted March 21, 1872.

CHAPTER IV.

BOTTOMRY.

§ 3017. Bottomry, what.
§ 3018. Owner of ship may hypothecate.
§ 3019. When master may hypothecate ship.
§ 3020. Same. [When owner cannot be reached, etc.]
§ 3021. When master may hypothecate freight money.
§ 3022. Rate of interest.
§ 3023. Rights of lender, when no necessity for bottomry existed.
§ 3024. Stipulation for personal liability void.
§ 3025. When money loaned is to be repaid.
§ 3026. When bottomry loan becomes due.
§ 3027. Bottomry lien, how lost.
§ 3028. Preference of bottomry lien over other liens.
§ 3029. Priority of bottomry liens.

§ 3017. **BOTTOMRY, WHAT.** Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period.

History: Enacted March 21, 1872.

§ 3018. **OWNER OF SHIP MAY HYPOTHECATE.** The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place.

History: Enacted March 21, 1872.

§ 3019. **WHEN MASTER MAY HYPOTHECATE SHIP.** The master of a ship may hypothecate it upon bottomry only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship.

History: Enacted March 21, 1872.

§ 3020. SAME. [WHEN OWNER CANNOT BE REACHED, ETC.] The master of a ship can hypothecate it upon bottomry only when he cannot otherwise relieve the necessities of the ship, and is unable to reach adequate funds of the owner, or to obtain any upon the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case.

History: Enacted March 21, 1872.

§ 3021. WHEN MASTER MAY HYPOTHECATE FREIGHT MONEY. The master of a ship may hypothecate freightage upon bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him.

History: Enacted March 21, 1872.

§ 3022. RATE OF INTEREST. Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant.

History: Enacted March 21, 1872.

§ 3023. RIGHTS OF LENDER, WHEN NO NECESSITY FOR BOTTOMRY EXISTED. A lender upon a contract of bottomry, made by the master of a ship, as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances.

History: Enacted March 21, 1872.

§ 3024. STIPULATION FOR PERSONAL LIABILITY VOID. A stipulation in a contract of bottomry, imposing

any liability for the loan independent of the maritime risks, is void.

History: Enacted March 21, 1872.

§ 3025. **WHEN MONEY LOANED IS TO BE REPAID.** In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved.

History: Enacted March 21, 1872.

§ 3026. **WHEN BOTTOMRY LOAN BECOMES DUE.** Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract.

History: Enacted March 21, 1872.

§ 3027. **BOTTOMRY LIEN, HOW LOST.** A bottomry lien is independent of possession, and is lost by omission to enforce it within a reasonable time.

History: Enacted March 21, 1872.

§ 3028. **PREFERENCE OF BOTTOMRY LIEN OVER OTHER LIENS.** A bottomry lien, if created out of a real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of materialmen for supplies or repairs indispensable to the safety of the ship, and a subsequent lien for salvage.

History: Enacted March 21, 1872.

§ 3029. **PRIORITY OF BOTTOMRY LIEN.** Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity.

History: Enacted March 21, 1872.

CHAPTER V.

RESPONDENTIA.

§ 3036. Respondentia, what.
§ 3037. Respondentia by owner.
§ 3038. Respondentia by master.
§ 3039. Rate of interest.
§ 3040. Obligations of ship-owner.

§ 3036. RESPONDENTIA, WHAT. Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risks.

History: Enacted March 21, 1872.

§ 3037. RESPONDENTIA BY OWNER. The owner of cargo may hypothecate it upon respondentia, at any time and place, and for any lawful purpose.

History: Enacted March 21, 1872.

§ 3038. RESPONDENTIA BY MASTER. The master of a ship may hypothecate its cargo upon respondentia only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies which are necessary for the successful accomplishment of the voyage; and he cannot do so, even in such case, if there is no reasonable prospect of benefiting the cargo thereby.

History: Enacted March 21, 1872.

§ 3039. **RATE OF INTEREST.** The provisions of sections three thousand and twenty-two to three thousand and twenty-nine apply equally to loans on respondentia.

History: Enacted March 21, 1872.

§ 3040. **OBLIGATIONS OF SHIP-OWNER.** The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay, under a contract of respondentia made by the master, in order to discharge its lien.

History: Enacted March 21, 1872.

CHAPTER VI.

OTHER LIENS.

§ 3046. Lien of seller of real property.
§ 3047. When transfer of contract waives lien.
§ 3048. Extent of seller's lien.
§ 3049. Lien of seller of personal property.
§ 3050. Purchaser's lien on real property.
§ 3051. Lien upon personal property for services performed.
§ 3052. Liens on personal property. [Lien-holder may sell].
§ 3053. Lien of factor.
§ 3054. Banker's lien.
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§ 3057. Officer's lien.
§ 3058. Judgment lien.
§ 3059. Mechanic's lien.
§ 3060. Lien on ships.
§ 3061. Lien of workmen on threshing machines, etc.
§ 3062. Lien of person in charge of stallion, etc.
§ 3063. Claimant of lien must file verified claim. Such claim a notice to subsequent purchasers.
§ 3064. Action to enforce lien.
§ 3065. Logger's lien. Upon what lien subsists. Lien ceases, when.

§ 3046. LIEN OF SELLER OF REAL PROPERTY. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

History: Enacted March 21, 1872.

§ 3047. WHEN TRANSFER OF CONTRACT WAIVES LIEN. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives

his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

History: Enacted March 21, 1872.

§ 3048. **EXTENT OF SELLER'S LIEN.** The liens defined in sections three thousand and forty-six and three thousand and fifty are valid against every one claiming under the debtor, except a purchaser or encumbrancer in good faith and for value.

History: Enacted March 21, 1872.

§ 3049. **LIEN OF SELLER OF PERSONAL PROPERTY.** One who sells personal property has a special lien thereon, dependent on possession, for its price, if it is in his possession when the price becomes payable, and may enforce his lien in like manner as if the property was pledged to him for the price.

History: Enacted March 21, 1872.

§ 3050. **PURCHASER'S LIEN ON REAL PROPERTY.** One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

History: Enacted March 21, 1872.

§ 3051. **LIEN UPON PERSONAL PROPERTY FOR SERVICES PERFORMED THEREON.** Every person who, while lawfully in possession of an article of personal property renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, de-

pendent on possession, for the compensation, if any, which is due to him from the owner for such service; a person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property, has a lien on the same for his reasonable charges for the balance due for such work done and materials furnished, any may retain possession of the same until the charges are paid; and livery or boarding or feed stable proprietors, and persons pasturing horses or stock, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, or pasturing such horses or stock; and laundry proprietors and persons conducting a laundry business, have a general lien, dependent on possession, upon all personal property in their hands belonging to a customer, for the balance due them from such customer for laundry work; and veterinary proprietors and veterinary surgeons shall have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, and medical treatment of animals; and keepers of garages for automobiles shall have a lien, dependent on possession, for their compensation in caring for and safe keeping [of] such automobiles.

History: Enacted March 21, 1872; amended March 29, 1878, Code Amdts. 1877-8, p. 89; March 1, 1907, Stats. and Amdts 1907, p. 85, Kerr's Stats. and Amdts. 1906-7, p. 428; April 12, 1911, p. 887.

§ 3052. **LIENS ON PERSONAL PROPERTY. [LIEN-HOLDER MAY SELL.]** If the person entitled to the lien provided for in section three thousand and fifty-one of this code be not paid the amount due and for which said lien is given, within twenty days after the same shall have become due, then such lien-holder may proceed to sell said property, or so much thereof as may be necessary to satisfy said lien and costs of sale, at public auction.

[Notice of sale.] And by giving, at least ten days' previous notice of such sale by advertising in some newspaper

published in the county in which such property is situated; or, if there be no newspaper published in such county, then by posting notices of the sale in three of the most public places in the town or place where such property is to be sold, for ten days previous to the date of sale.

The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 418, held unconstitutional, see history, § 593 ante; amended March 1, 1907, Stats. and Amdts. 1907, p. 86, Kerr's Stats. and Amdts. 1906-7, p. 428.

§ 3053. **LIEN OF FACTOR.** A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

History: Enacted March 21, 1872.

§ 3054. **BANKER'S LIEN.** A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

History: Enacted March 21, 1872.

§ 3055. **SHIPMASTER'S LIEN.** The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

History: Enacted March 21, 1872.

§ 3056. **SEAMEN'S LIEN.** The mate and seamen of a ship have a general lien, independent of possession, upon

the ship and freightage, for their wages, which is superior to every other lien.

History: Enacted March 21, 1872.

§ 3057. **OFFICER'S LIEN.** An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

History: Enacted March 21, 1872.

§ 3058. **JUDGMENT LIEN.** The lien of a judgment is regulated by the code of civil procedure.

History: Enacted March 21, 1872.

§ 3059. **MECHANIC'S LIEN.** The liens of mechanics, for materials and services upon real property, are regulated by the code of civil procedure.

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 418, held unconstitutional, see history, § 4 ante.

§ 3060. **LIEN ON SHIPS.** Debts amounting to at least fifty dollars, contracted for the benefit of ships, are liens in the cases provided by the code of civil procedure.

History: Enacted March 21, 1872; repealed by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 418, held unconstitutional, see history, § 4 ante.

§ 3061. **LIEN OF WORKMEN ON THRESHING MACHINES, ETC.** Every person performing work or labor in, with, about, or upon any barley crusher, threshing machine or engine, horsepower, wagon, or other appliance thereof, while engaged in crushing or threshing, has a lien thereon

to the extent of the value of his services. Such lien extends for ten days after any such person ceases such work or labor; provided, within that time, an action is brought to recover the amount of the claim. If judgment is given in favor of the plaintiff in any such action, and it is further found that he is entitled to a lien under the provisions of this section, property subject thereto, or so much thereof as may be necessary, may be sold to satisfy such judgment; but if several judgments have been recovered against the same property for the enforcement of such liens, the proceeds of the sale must be divided pro rata among the judgment creditors.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 418, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 618; founded upon Act March 12, 1885, Stats. and Amdts. 1885, p. 109.

§ 3062. **LIEN OF PERSON IN CHARGE OF STALLION, ETC.** Every owner or person having in charge any stallion, jack, or bull, used for propagating purposes, has a lien for the agreed price of its service upon any mare or cow and upon the offspring of such service, unless some wilfully false representation concerning the breeding or pedigree of such stallion, jack, or bull has been made or published by the owner or person in charge thereof, or by some other person, at the request or instigation of such owner or person in charge.

History: Enacted by Code Commission, Act March 16, 1901. Stats. and Amdts. 1900-1, p. 419; held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, p. 617; a codification of § 1, Act March 11, 1891, Stats. and Amdts. 1891, p. 90.

§ 3063. **CLAIMANT OF LIEN MUST FILE VERIFIED CLAIM. SUCH CLAIM A NOTICE TO SUBSEQUENT PURCHASERS.** Every claimant of a lien provided for in the preceding section must, within ninety days after the service on account of which the lien is claimed, file in the office

of the county recorder of the county where the mare or cow subject thereto is kept, a verified claim containing a particular description of the mare or cow, the date and place of service, the name of the owner or reputed owner of such mare or cow, a description by name, or otherwise, of the stallion, jack, or bull performing the service, the name of the owner or person in charge thereof, and the amount of the lien claimed. Such claim, so filed, is notice to subsequent purchasers and encumbrancers of such mare or cow and of the offspring of such service for one year after such filing.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 419, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 618; a codification of § 2, Act March 11, 1891, Stats. and Amdts. 1891, p. 91.

§ 3064. **ACTION TO ENFORCE LIEN.** An action to enforce any lien created under section thirty hundred and sixty-two may be brought in any county wherein any of the property subject thereto may be found, and the plaintiff is entitled to the remedies provided in sections thirty hundred and forty-four and thirty hundred and sixty-five upon complying with such sections, both of which are hereby made applicable to the proceedings in such action.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 419, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 619; founded upon §§3, 4, Act March 11, 1891, Stats. and Amdts. 1891, p. 91.

§ 3065. **LOGGER'S LIEN. UPON WHAT LIEN SUBSISTS. LIEN CEASES, WHEN.** A person who labors at cutting, hauling, rafting, or drawing logs, bolts, or other timber, has a lien thereon for the amount due for his personal services, which takes precedence of all other claims, to continue for thirty days after the logs, bolts, or other timber arrive at the place of destination for sale or manufacture,

while such logs, bolts, or other timber are in the county in which such labor was performed. The lien hereby created ceases and determines unless the claimant thereof, within twenty days from the time such labor is completed, brings suit to foreclose the same. The plaintiff in any such suit, at the time of issuing the summons or at any time afterwards, may have the logs, bolts, or other timber upon which such lien subsists attached, as provided in this code, upon delivering to the clerk an affidavit by or on behalf of the plaintiff, showing that defendant is indebted to the plaintiff upon a demand for labor performed, either in the cutting, hauling, rafting, or drawing such logs, bolts, or other timber, and that the sum for which the attachment is asked is an actual bona fide existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought, and the action is not brought, to hinder, delay, or defraud any creditor or creditors of the defendant.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 419, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 619; founded upon Act March 30, 1878, Stats. 1877-8, p. 747, as amended April 12, 1880, Stats. 1880, p. 38, and March 8, 1887, Stats. and Amdts. 1887, p. 53.

CHAPTER VII.

STOPPAGE IN TRANSIT.

§ 3076. When consignor may stop goods.
§ 3077. What is insolvency of consignee.
§ 3078. Transit, when ended.
§ 3079. Stoppage, how effected.
§ 3080. Effect of stoppage.

§ 3076. WHEN CONSIGNOR MAY STOP GOODS. A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

History: Enacted March 21, 1872.

§ 3077. WHAT IS INSOLVENCY OF CONSIGNEE. A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

History: Enacted March 21, 1872.

§ 3078. TRANSIT, WHEN ENDED. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

History: Enacted March 21, 1872.

§ 3079. **STOPPAGE, HOW EFFECTED.** Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

History: Enacted March 21, 1872.

§ 3080. **EFFECT OF STOPPAGE.** Stoppage in transit does not, of itself, rescind a sale, but is a means of enforcing the lien of the seller.

History: Enacted March 21, 1872.

TITLE XV.

NEGOTIABLE INSTRUMENTS.

Chapter I. Negotiable Instruments in General, §§ 3086-3165.
II. Bills of Exchange, §§ 3171-3238.
III. Promissory Notes, §§ 3244-3248.
IV. Checks, §§ 3254, 3255.
V. Bank Notes and Certificates of Deposit, §§ 3261, 3262.

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL

Article I. General Definitions, §§ 3086-3095.
II. Interpretation, §§ 3099-3104.
III. Indorsement, §§3108-3125.
IV. Presentment for Payment, §§ 3130-3137.
V. Dishonor, §§ 3141-3151.
VI. Excuse of Presentment and Notice, §§ 3155-3160.
VII. Extinction, §§ 3164, 3165.

ARTICLE I.

GENERAL DEFINITIONS.

§ 3086. To what instruments this title is applicable.
§ 3087. Negotiable instrument, what.
§ 3088. Must be for unconditional payment of money. Attorney's fees and costs.
§ 3089. Payee.
§ 3090. Instrument may be in alternative.
§ 3091. Date, etc.
§ 3092. May contain a pledge, etc.
§ 3093. What it must not contain.
§ 3094. Date.
§ 3095. Different classes of negotiable instruments.

§ 3086. TO WHAT INSTRUMENTS THIS TITLE IS APPLICABLE. The provisions of this title apply only to negotiable instruments, as defined in this article.

History: Enacted March 21, 1872.

§ 3087. NEGOTIABLE INSTRUMENT, WHAT. A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer, in conformity to the provisions of this article.

History: Enacted March 21, 1872.

§ 3088. MUST BE FOR UNCONDITIONAL PAYMENT OF MONEY. ATTORNEY'S FEES AND COSTS. A negotiable instrument must be made payable in money only and without any condition not certain of fulfilment, except that it may provide for the payment of attorney's fees and costs of suit, in case suit be brought thereon to compel the payment thereof;

[Bonds secured by mortgage, etc.] Provided, however, that bonds payable to bearer shall be negotiable, notwithstanding

any condition contained therein or in the mortgage, deed of trust or other instrument securing the same.

History: Enacted March 21, 1872; amended March 10, 1905, by adding exception to attorney's fees and costs, Stats. and Amdts. 1905, p. 96; amendment became law, under constitutional provision, without Governor's approval April 19, 1915, Stats. and Amdts. 1915, p. 99. **In effect** August 8, 1915.

§ 3089. **PAYEE.** The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made.

History: Enacted March 21, 1872.

§ 3090. **INSTRUMENT MAY BE IN ALTERNATIVE.** A negotiable instrument may give to the payee an option between the payment of the sum specified therein and the performance of another act; but as to the latter, the instrument is not within the provisions of this title.

History: Enacted March 21, 1872.

§ 3091. **DATE, ETC.** A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.

History: Enacted March 21, 1872.

§ 3092. **MAY CONTAIN A PLEDGE, ETC.** A negotiable instrument must not contain any other contract than with authority to dispose thereof.

History: Enacted March 21, 1872.

§ 3093. **WHAT IT MUST NOT CONTAIN.** A negotiable instrument must not contain any other contract than such as is specified in this article.

History: Enacted March 21, 1872.

§ 3094. **DATE.** Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

History: Enacted March 21, 1872.

§ 3095. **DIFFERENT CLASSES OF NEGOTIABLE INSTRUMENTS.** There are six classes of negotiable instruments, namely:

1. Bills of exchange;
2. Promissory notes;
3. Bank notes;
4. Checks;
5. Bonds;
6. Certificates of deposit.

History: Enacted March 21, 1872.

ARTICLE II.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

§ 3099. Time and place of payment.
§ 3100. Place of payment not specified.
§ 3101. Instruments payable to a person or his order, how construed.
§ 3102. Unindorsed note, when negotiable.
§ 3103. Fictitious payee.
§ 3104. Presumption of consideration.

§ 3099. **TIME AND PLACE OF PAYMENT.** A negotiable instrument which does not specify the time of payment, is payable immediately.

History: Enacted March 21, 1872.

§ 3100. **PLACE OF PAYMENT NOT SPECIFIED.** A negotiable instrument which does not specify a place of payment, is payable at the residence or place of business of the maker, or wherever he may be found.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 262.

§ 3101. **INSTRUMENTS PAYABLE TO A PERSON OR HIS ORDER, HOW CONSTRUED.** An instrument, otherwise negotiable in form, payable to a person named, but with the words added, "or to his order," or "to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and in the latter case payable to the bearer.

History: Enacted March 21, 1872.

§ 3102. **UNINDORSED NOTE, WHEN NEGOTIABLE.** A negotiable instrument, made payable to the order

of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts as if payable to the bearer.

History: Enacted March 21, 1872.

§ 3103. **FICTITIOUS PAYEE.** A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer.

History: Enacted March 21, 1872.

§ 3104. **PRESUMPTION OF CONSIDERATION.** The signature of every drawer, acceptor, and indorser of a negotiable instrument is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business.

History: Enacted March 21, 1872.

ARTICLE III.

INDORSEMENT.

§ 3108. Indorsement, what.
§ 3109. Agreement to indorse.
§ 3110. When may be made on separate paper.
§ 3111. Kinds of indorsement.
§ 3112. General indorsement, what.
§ 3113. Special indorsement, what.
§ 3114. General indorsement, how made special.
§ 3115. Destruction of negotiability by indorser.
§ 3116. Implied warranty of indorser.
§ 3117. Indorser, when liable to payee.
§ 3118. Indorsement without recourse.
§ 3119. Same. [Effect of.]
§ 3120. Indorsee privy to contract.
§ 3121. Rights of accommodation indorser [repealed].
§ 3122. Effect of want of consideration.
§ 3123. Indorsee in due course, what.
§ 3124. Rights of indorsee in due course.
§ 3125. Instrument left blank.

§ 3108. INDORSEMENT, WHAT. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it, with his name thereon, to another person, is called an indorser, and his act is called indorsement.

History: Enacted March 21, 1872.

§ 3109. AGREEMENT TO INDORSE. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

History: Enacted March 21, 1872.

§ 3110. WHEN MAY BE MADE ON SEPARATE PAPER. When there is not room for a signature upon the

back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

History: Enacted March 21, 1872.

§ 3111. **KINDS OF INDORSEMENT.** An indorsement may be general or special.

History: Enacted March 21, 1872.

§ 3112. **GENERAL INDORSEMENT, WHAT.** A general indorsement is one by which no indorsee is named.

History: Enacted March 21, 1872.

§ 3113. **SPECIAL INDORSEMENT, WHAT.** A special indorsement specifies the indorsee.

History: Enacted March 21, 1872.

§ 3114. **GENERAL INDORSEMENT, HOW MADE SPECIAL.** A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one, by writing above it a direction for payment to a particular person.

History: Enacted March 21, 1872.

§ 3115. **DESTRUCTION OF NEGOTIABILITY BY INDORSER.** A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

History: Enacted March 21, 1872.

§ 3116. **IMPLIED WARRANTIES OF INDORSER.** Every indorser of a negotiable instrument, unless his in-

dorsement is qualified, warrants to every subsequent holder thereof, who is not liable thereon to him:

1. That it is in all respects what it purports to be.

2. That he has a good title to it.

3. That the signatures of all prior parties are binding upon them.

4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay the same with interest, unless exonerated under the provisions of sections thirty-one hundred and eighty-nine, thirty-two hundred and thirteen, thirty-two hundred and forty-eight, or thirty-two hundred and fifty-five.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 263.

§ 3117. **INDORSER, WHEN LIABLE TO PAYEE.** One who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee thereon, as an indorser.

History: Enacted March 21, 1872.

§ 3118. **INDORSEMENT WITHOUT RECOURSE.** An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement.

History: Enacted March 21, 1872.

§ 3119. **SAME. [EFFECT OF.]** Except as otherwise prescribed by the last section, an indorsement, without recourse, has the same effect as any other indorsement.

History: Enacted March 21, 1872.

§ 3120. INDORSEE PRIVY TO CONTRACT. An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance.

History: Enacted March 21, 1872.

§ 3121. RIGHTS OF ACCOMMODATION INDORSER [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 263.

§ 3122. EFFECT OF WANT OF CONSIDERATION. The want of consideration for the undertaking of a maker, accepter, or indorser of a negotiable instrument does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

History: Enacted March 21, 1872.

§ 3123. INDORSEE IN DUE COURSE, WHAT. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

History: Enacted March 21, 1872.

§ 3124. RIGHTS OF INDORSEE IN DUE COURSE. An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

History: Enacted March 21, 1872.

§ 3125. **INSTRUMENT LEFT BLANK.** One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

History: Enacted March 21, 1872.

ARTICLE IV.

PRESENTMENT FOR PAYMENT.

§ 3130. Effect of want of demand on principal debtor.
§ 3131. Presentment for payment, how made.
§ 3132. Apparent maturity, when.
§ 3133. Presumptive dishonor of bill, payable after sight.
§ 3134. Apparent maturity of bill, payable at sight.
§ 3135. Apparent maturity of note.
§ 3136. Same. [After sight or demand.]
§ 3137. Surrender of instrument, when a condition of payment.

§ 3130. EFFECT OF WANT OF DEMAND ON PRINCIPAL DEBTOR. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

History: Enacted March 21, 1872.

§ 3131. PRESENTMENT FOR PAYMENT, HOW MADE. Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable diligence it is practicable:

1. The instrument must be presented by the holder, or his agent;

2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there;

3. An instrument which specifies a place for its payment must be presented there; and if the place specified includes

more than one house, then at the place of residence, or business, of the principal debtor, if it can be found therein;

4. An instrument which does not specify a place for its payment must be presented at the place of residence, or business, of the principal debtor, or wherever he may be found, at the option of the presenter;

5. The instrument must be presented upon the day of its maturity, or, if it is payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and if it is payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day;

6. If the principal debtor has no place of business, or if his place of business, or residence, cannot, with reasonable diligence, be ascertained, presentment for payment is excused.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 263; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 420, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 620.

§ 3132. **APPARENT MATURITY, WHEN.** The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which, by its terms, it becomes due, or when that is a holiday, the next business day.

History: Enacted March 21, 1872.

§ 3133. **PRESUMPTIVE DISHONOR OF BILL, PAYABLE AFTER SIGHT.** A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

History: Enacted March 21, 1872.

§ 3134. APPARENT MATURITY OF BILL, PAYABLE AT SIGHT. The apparent maturity of a bill of exchange, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,

2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

History: Enacted March 21, 1872.

§ 3135. APPARENT MATURITY OF NOTE. The apparent maturity of a promissory note, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,

2. If it does not bear interest, six months after its date.

History: Enacted March 21, 1872.

§ 3136. SAME. [AFTER SIGHT OR DEMAND.] Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

History: Enacted March 21, 1872.

§ 3137. SURRENDER OF INSTRUMENT, WHEN A CONDITION OF PAYMENT. A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

1. That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or,

2. If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,

3. If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

History: Enacted March 21, 1872.

ARTICLE V.

DISHONOR OF NEGOTIABLE INSTRUMENTS.

§ 3141. Dishonor, what.
§ 3142. Notice, by whom given.
§ 3143. Form of notice.
§ 3144. Notice, how served.
§ 3145. Notice, how served after indorser's death.
§ 3146. Notice given in ignorance of death, valid.
§ 3147. Notice, when to be given.
§ 3148. Notice of dishonor, when to be mailed.
§ 3149. Notice, how given by agent.
§ 3150. Additional time for notice to be given by indorser.
§ 3151. Effect of notice of dishonor.

§ 3141. **DISHONOR, WHAT.** A negotiable instrument is dishonored, when it is either not paid, or not accepted, according to its tenor, on presentment for the purpose, or without presentment, where that is excused.

History: Enacted March 21, 1872.

§ 3142. **NOTICE, BY WHOM GIVEN.** Notice of the dishonor of a negotiable instrument may be given:

1. By a holder thereof; or,

2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

History: Enacted March 21, 1872.

§ 3143. **FORM OF NOTICE.** A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored.

History: Enacted March 21, 1872.

§ 3144. **NOTICE, HOW SERVED.** A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally, at any place; or,

2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,

3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post office most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

History: Enacted March 21, 1872.

§ 3145. **NOTICE, HOW SERVED AFTER INDORSER'S DEATH.** In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or, if there are none, then to any member of his family who resided with him at his death; or, if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision three of the last section.

History: Enacted March 21, 1872.

§ 3146. **NOTICE GIVEN IN IGNORANCE OF DEATH, VALID.** A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

History: Enacted March 21, 1872.

§ 3147. **NOTICE, WHEN TO BE GIVEN.** Notice of dishonor, when given by the holder of an instrument or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

History: Enacted March 21, 1872.

§ 3148. **NOTICE OF DISHONOR, WHEN TO BE MAILED.** When notice of dishonor is given by mail, it must be deposited in the post office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

History: Enacted March 21, 1872.

§ 3149. **NOTICE, HOW GIVEN BY AGENT.** When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a subagent, it is sufficient for each successive agent or subagent to give notice in like manner to his own principal.

History: Enacted March 21, 1872.

§ 3150. **ADDITIONAL TIME FOR NOTICE BY INDORSER.** Every party to a negotiable instrument, receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

History: Enacted March 21, 1872.

§ 3151. **EFFECT OF NOTICE OF DISHONOR.** A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto whose right to give the like notice has not then been lost.

History: Enacted March 21, 1872.

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

§ 3155. Notice of dishonor, when excused.
§ 3156. Presentment and notice, when excused.
§ 3157. Same. [Full security being received.]
§ 3158. Delay, when excused.
§ 3159. Waiver of presentment and notice.
§ 3160. Waiver of protest.

§ 3155. NOTICE OF DISHONOR, WHEN EXCUSED. Notice of dishonor is excused:

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or,

2. When there is no post-office communication between the town of the party by whom the notice should be given and the town in which the place of residence or business of the party to be charged is situated; or,

3. When the party to be charged is the same person who dishonors the instrument; or,

4. When the notice is waived by the party entitled thereto.

History: Enacted March 21, 1872.

§ 3156. PRESENTMENT AND NOTICE, WHEN EXCUSED. Presentment and notice are excused as to any party to a negotiable instrument who informs the holder, within ten days before its maturity, that it will be dishonored.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 420, held unconstitutional, see history, § 4 ante.

§ 3157. SAME. [FULL SECURITY BEING RECEIVED.] If, before or after the maturity of an instru-

ment, an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

History: Enacted March 21, 1872.

§ 3158. **DELAY, WHEN EXCUSED.** Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

History: Enacted March 21, 1872.

§ 3159. **WAIVER OF PRESENTMENT AND NOTICE.** A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

History: Enacted March 21, 1872.

§ 3160. **WAIVER OF PROTEST.** A waiver of protest on any negotiable instrument other than a foreign bill of exchange waives presentment and notice.

History: Enacted March 21, 1872.

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

§ 3164. Obligation of party, when extinguished.
§ 3165. Revival of obligation [repealed].

§ 3164. OBLIGATION OF PARTY, WHEN EXTINGUISHED. The obligation of a party to a negotiable instrument is extinguished:

1. In like manner with that of parties to contracts in general; or,

2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof, and entitled by its terms to payment.

History: Enacted March 21, 1872.

§ 3165. REVIVAL OF OBLIGATION [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 264.

CHAPTER II.

BILLS OF EXCHANGE.

Article I. Form and Interpretation, §§ 3171-3177.
II. Days of Grace, § 3181.
III. Presentment for Acceptance, §§ 3185-3189.
IV. Acceptance, §§ 3193-3199.
V. Acceptance or Payment for Honor, §§ 3203-3207.
VI. Presentment for Payment, §§ 3211-3214.
VII. Excuse of Presentment and Notice, §§ 3218-3220.
VIII. Foreign Bills, §§ 3224-3238.

ARTICLE I.

FORM AND INTERPRETATION OF A BILL.

§ 3171. Bill of exchange, what.
§ 3172. Drawee, in case of need.
§ 3173. Bill in parts of a set.
§ 3174. When must be in a set.
§ 3175. Presentment, etc., of part of set.
§ 3176. Bill, where payable.
§ 3177. Rights and obligations of drawer.

§ 3171. BILL OF EXCHANGE, WHAT. A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

History: Enacted March 21, 1872.

§ 3172. **DRAWEE, IN CASE OF NEED.** A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

History: Enacted March 21, 1872.

§ 3173. **BILL IN PARTS OF A SET.** A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

History: Enacted March 21, 1872.

§ 3174. **WHEN MUST BE IN A SET.** An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

History: Enacted March 21, 1872.

§ 3175. **PRESENTMENT, ETC., OF PART OF SET.** Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

History: Enacted March 21, 1872.

§ 3176. **BILL, WHERE PAYABLE.** A bill of exchange is payable:

1. At the place where, by its terms, it is made payable.

2. If it specifies no place of payment, then at the place to which it is addressed.

3. If it is not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused, and the bill may be protested for non-payment.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 264; amended by Code Commission, Act

March 16, 1901, Stats. and Amdts. 1900-1, p. 420, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 620.

§ 3177. **RIGHTS AND OBLIGATIONS OF DRAWER.** The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument.

History: Enacted March 21, 1872.

ARTICLE II.

DAYS OF GRACE.

§ 3181. Days of grace.

§ 3181. DAYS OF GRACE. Days of grace are not allowed.

History: Enacted March 21, 1872.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

§ 3185. When a bill may be presented.
§ 3186. Presentment, how made.
§ 3187. Presentment to joint drawees.
§ 3188. When presentment to be made to drawee in case of need.
§ 3189. Presentment, when must be made.

§ 3185. WHEN A BILL MAY BE PRESENTED. At any time before a bill of exchange is payable, the holder may present it to the drawee for acceptance, and if acceptance is refused, the bill is dishonored.

History: Enacted March 21, 1872.

§ 3186. PRESENTMENT, HOW MADE. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

1. The bill must be presented by the holder or his agent.

2. It must be presented on a business day, and within reasonable hours.

3. It must be presented to the drawee, or, if he be absent

from his place of residence or business, to some person having charge thereof, or employed therein; and,

4. The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 265.

§ 3187. **PRESENTMENT TO JOINT DRAWEES.** Presentment for acceptance to one of several joint drawees, and refusal by him, dispenses with presentment to the others.

History: Enacted March 21, 1872.

§ 3188. **WHEN PRESENTMENT TO BE MADE TO DRAWEE IN CASE OF NEED.** A bill of exchange which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

History: Enacted March 21, 1872.

§ 3189. **PRESENTMENT, WHEN MUST BE MADE.** When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

History: Enacted March 21, 1872.

ARTICLE IV.

ACCEPTANCE.

§ 3193. Acceptance, how made.
§ 3194. Holder entitled to acceptance on face of bill.
§ 3195. What acceptance sufficient with consent of holder.
§ 3196. Acceptance by separate instrument.
§ 3197. Promise to accept, when equivalent to acceptance.
§ 3198. Cancelation of acceptance.
§ 3199. What is admitted by acceptance.

§ 3193. **ACCEPTANCE, HOW MADE.** An acceptance of a bill must be made in writing, by the drawee or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words.

History: Enacted March 21, 1872.

§ 3194. **HOLDER ENTITLED TO ACCEPTANCE ON FACE OF BILL.** The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.

History: Enacted March 21, 1872.

§ 3195. **WHAT ACCEPTANCE SUFFICIENT WITH CONSENT OF HOLDER.** The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

1. An acceptance written upon any part of the bill, or upon a separate paper;

2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable; or,

3. A refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately, without regard to its terms.

History: Enacted March 21, 1872.

§ 3196. **ACCEPTANCE BY SEPARATE INSTRUMENT.** The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who, upon the faith thereof, has the bill for value or other good consideration.

History: Enacted March 21, 1872.

§ 3197. **PROMISE TO ACCEPT, WHEN EQUIVALENT TO ACCEPTANCE.** An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 421, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 621.

§ 3198. **CANCELATION OF ACCEPTANCE.** The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance.

History: Enacted March 21, 1872.

§ 3199. **WHAT IS ADMITTED BY ACCEPTANCE.** The acceptance of a bill of exchange admits the signature of the drawer, but does not admit the signature of any indorser to be genuine.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 265.

ARTICLE V.

ACCEPTANCE OR PAYMENT FOR HONOR.

§ 3203. When bill may be accepted or paid for honor.
§ 3204. Holder of bill of exchange bound to accept payment for honor.
§ 3205. Acceptance for honor, how made.
§ 3206. How enforced.
§ 3207. Notice of dishonor not excused by acceptance for honor.

§ 3203. WHEN BILL MAY BE ACCEPTED OR PAID FOR HONOR. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

History: Enacted March 21, 1872.

§ 3204. HOLDER OF BILL OF EXCHANGE BOUND TO ACCEPT PAYMENT FOR HONOR. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

History: Enacted March 21, 1872.

§ 3205. ACCEPTANCE FOR HONOR, HOW MADE. An acceptor or payer for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them.

History: Enacted March 21, 1872.

§ 3206. HOW ENFORCED. A bill of exchange which has been accepted for honor must be presented at its ma-

turity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor, in like manner as to an indorser; after which the acceptor for honor must pay the bill.

History: Enacted March 21, 1872.

§ 3207. **NOTICE OF DISHONOR NOT EXCUSED BY ACCEPTANCE FOR HONOR.** The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

History: Enacted March 21, 1872.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

§ 3211. Presentment, when bill not accepted, where made.
§ 3212. Presentment of bill, payable at particular place.
§ 3213. Effect of delay in presentment, in certain cases.
§ 3214. Effect in other cases.

§ 3211. PRESENTMENT, WHEN BILL NOT ACCEPTED, WHERE MADE. If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

History: Enacted March 21, 1872.

§ 3212. PRESENTMENT OF BILL, PAYABLE AT PARTICULAR PLACE. A bill of exchange, accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere.

History: Enacted March 21, 1872.

§3213. EFFECT OF DELAY IN PRESENTMENT, IN CERTAIN CASES. If a bill of exchange, payable at sight or on demand, without interest, is not duly presented for payment within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

History: Enacted March 21, 1872.

§ 3214. EFFECT IN OTHER CASES. Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party thereto.

History: Enacted March 21, 1872.

ARTICLE VII.

EXCUSE OF PRESENTMENT AND NOTICE.

§ 3218. Presentment, when excused.
§ 3219. Delay, when excused.
§ 3220. Presentment and notice, when excused.

§ 3218. PRESENTMENT, WHEN EXCUSED. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

History: Enacted March 21, 1872.

§ 3219. DELAY, WHEN EXCUSED. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

History: Enacted March 21, 1872.

§ 3220. PRESENTMENT AND NOTICE, WHEN EXCUSED. Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

History: Enacted March 21, 1872.

ARTICLE VIII.

FOREIGN BILLS.

§ 3224. Definitions.
§ 3225. Protest necessary.
§ 3226. Protest, by whom made.
§ 3227. Protest, how made.
§ 3228. Protest, where made.
§ 3229. Protest, when to be made.
§ 3230. Protest, when excused.
§ 3231. Notice of protest, how given.
§ 3232. Waiver of protest.
§ 3233. Declaration before payment for honor.
§ 3234. Damages allowed on dishonor of foreign bill.
§ 3235. Rate of damages.
§ 3236. Interest on amount of protested bill.
§ 3237. Damages, how estimated.
§ 3238. Same. [In foreign money.]

§ 3224. **DEFINITIONS.** An inland bill of exchange is one drawn and payable within this state. All others are foreign.

History: Enacted March 21, 1872.

§ 3225. **PROTEST NECESSARY.** Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.

History: Enacted March 21, 1872.

§ 3226. **PROTEST, BY WHOM MADE.** Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person, in the presence of two witnesses.

History: Enacted March 21, 1872.

§ 3227. **PROTEST, HOW MADE.** Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and, finally, protesting against all the parties to be charged.

History: Enacted March 21, 1872.

§ 3228. **PROTEST, WHERE MADE.** A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment.

History: Enacted March 21, 1872.

§ 3229. **PROTEST, WHEN TO BE MADE.** A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter.

History: Enacted March 21, 1872.

§ 3230. **PROTEST, WHEN EXCUSED.** The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment.

History: Enacted March 21, 1872.

§ 3231. **NOTICE OF PROTEST, HOW GIVEN.** Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.

History: Enacted March 21, 1872.

§ 3232. **WAIVER OF PROTEST.** If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.

History: Enacted March 21, 1872.

§ 3233. **DECLARATION BEFORE PAYMENT FOR HONOR.** One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

History: Enacted March 21, 1872.

§ 3234. **DAMAGES ALLOWED ON DISHONOR OF FOREIGN BILL.** Damages are allowed as hereinafter prescribed, as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this state, and protested for non-acceptance or non-payment.

History: Enacted March 21, 1872.

§ 3235. **RATE OF DAMAGES.** Damages are allowed under the last section upon bills drawn upon any person:

1. If drawn upon a person in this state, two dollars upon each one hundred dollars of the principal sum specified in the bill;

2. If drawn upon a person out of this state, five dollars upon each one hundred dollars of the principal sum specified in the bill;

3. If drawn upon a person in any place in a foreign coun-

try, fifteen dollars upon each one hundred dollars of the principal sum specified in the bill.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 421, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 621.

§ 3236. **INTEREST ON AMOUNT OF PROTESTED BILL.** From the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding section.

History: Enacted March 21, 1872.

§ 3237. **DAMAGES, HOW ESTIMATED.** If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

History: Enacted March 21, 1872.

§ 3238. **SAME. [IN FOREIGN MONEY.]** If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated and where such bills are currently sold.

History: Enacted March 21, 1872.

CHAPTER III.

PROMISSORY NOTES.

§ 3244. Promissory note, what.
§ 3245. Certain instruments promissory notes.
§ 3246. Bill of exchange, when converted into a note.
§ 3247. Certain sections applicable to notes.
§ 3248. Effect of delay in presentment.

§ 3244. PROMISSORY NOTE, WHAT. A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money.

History: Enacted March 21, 1872.

§ 3245. CERTAIN INSTRUMENTS PROMISSORY NOTES. An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 421, held unconstitutional, see history, § 4 ante.

§ 3246. BILL OF EXCHANGE, WHEN CONVERTED INTO A NOTE. A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

History: Enacted March 21, 1872.

§ 3247. CERTAIN SECTIONS APPLICABLE TO NOTES. Chapter one of this title, and sections thirty-one

hundred and eighty-one and thirty-two hundred and fourteen of this code, apply to promissory notes.

History: Enacted March 21, 1872.

§ 3248. **EFFECT OF DELAY IN PRESENTMENT.** If a promissory note, payable on demand, or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused.

History: Enacted March 21, 1872.

CHAPTER IV.

CHECKS.

§ 3254. Check, what.
§ 3255. Rules applicable to checks.

§ 3254. CHECK, WHAT. A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.

History: Enacted March 21, 1872.

§ 3255. RULES APPLICABLE TO CHECKS. A check is subject to all the provisions of this code concerning bills of exchange, except that:

1. The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby;

2. An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

History: Enacted March 21, 1872.

CHAPTER V.

BONDS, BANK NOTES, AND CERTIFICATES OF DEPOSIT.

§ 3261. Bank note negotiable after payment.
§ 3262. Title acquired by indorsee [repealed].

§ 3261. BANK NOTE NEGOTIABLE AFTER PAYMENT. A bank note remains negotiable, even after it has been paid by the maker.

History: Enacted March 21, 1872.

§ 3262. TITLE ACQUIRED BY INDORSEE [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 265.

TITLE XVI.

GENERAL PROVISIONS.

§ 3268. Parties may waive provisions of code.

§ 3268. PARTIES MAY WAIVE PROVISIONS OF CODE. Except where it is otherwise declared, the provisions of the foregoing fifteen titles of this part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

History: Enacted March 21, 1872.

DIVISION FOURTH.

Part I. Relief, §§ 3274-3423.

II. Special Relations of Debtor and Creditor, §§ 3429-3473.

III. Nuisance, §§ 3479-3503.

IV. Maxims of Jurisprudence, §§ 3509-3543.

PART I.

RELIEF.

Title I. Relief in General, §§ 3274, 3275.
II. Compensatory Relief, §§ 3281-3360.
III. Specific and Preventive Relief, §§ 3366-3423.

TITLE I.

RELIEF IN GENERAL.

§ 3274. Species of relief.
§ 3275. Relief in case of forfeiture.

§ 3274. **SPECIES OF RELIEF.** As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the civil code.

History: Enacted March 21, 1872.

§ 3275. **RELIEF IN CASE OF FORFEITURE.** Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, wilful, or fraudulent breach of duty.

History: Enacted March 21, 1872.

TITLE II.

COMPENSATORY RELIEF.

Chapter I. Damages in General, §§ 3281-3294.
II. Measure of Damages, §§ 3300-3360.

CHAPTER I.

DAMAGES IN GENERAL.

Article I. General Principles, §§ 3281-3283.
II. Interest as Damages, §§ 3287-3290.
III. Exemplary Damages, § 3294.

ARTICLE I.

GENERAL PRINCIPLES.

§ 3281. Person suffering detriment may recover damages.
§ 3282. Detriment, what.
§ 3283. Injuries resulting or probable after suit brought.

§ 3281. **PERSON SUFFERING DETRIMENT MAY RECOVER DAMAGES.** Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.

History: Enacted March 21, 1872.

§ 3282. **DETRIMENT, WHAT.** Detriment is a loss or harm suffered in person or property.

History: Enacted March 21, 1872.

§ 3283. **INJURIES RESULTING OR PROBABLE AFTER SUIT BROUGHT.** Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.

History: Enacted March 21, 1872.

ARTICLE II.

INTEREST AS DAMAGES.

§ 3287. Person entitled to recover damages may recover interest thereon.
§ 3288. In action other than contract.
§ 3289. Limit of rate by contract.
§ 3290. Acceptance of principal waives claim to interest.

§ 3287. PERSON ENTITLED TO RECOVER DAMAGES MAY RECOVER INTEREST THEREON. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

History: Enacted March 21, 1872.

§ 3288. IN ACTION OTHER THAN CONTRACT. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.

History: Enacted March 21, 1872.

§ 3289. LIMIT OF RATE BY CONTRACT. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

History: Enacted March 21, 1872.

§ 3290. ACCEPTANCE OF PRINCIPAL WAIVES CLAIM TO INTEREST. Accepting payment of the whole principal, as such, waives all claim to interest.

History: Enacted March 21, 1872.

ARTICLE III.

EXEMPLARY DAMAGES.

§ 3294. Exemplary damages, in what cases allowed.

§ 3294. EXEMPLARY DAMAGES, IN WHAT CASES ALLOWED. In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 421, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 621.

CHAPTER II.

MEASURE OF DAMAGES.

Article I. Damages for Breach of Contract, §§ 3300-3319.
II. Damages for Wrongs, §§ 3333-3341.
III. Penal Damages, §§ 3344-3348.
IV. General Provisions, §§ 3353-3360.

ARTICLE I.

DAMAGES FOR BREACH OF CONTRACT.

§ 3300. Measure of damages for breach of contract.
§ 3301. Damages must be certain.
§ 3302. Breach of contract to pay liquidated sum.
§ 3303. Dishonor of foreign bills of exchange.
§ 3304. Detriment caused by breach of covenant of seizin, etc. What is.
§ 3305. Detriment caused by breach of covenant against encumbrances, is what.
§ 3306. Breach of agreement to convey real property.
§ 3307. Breach of agreement to buy real property.
§ 3308. Breach of agreement to sell personal property, not paid for.
§ 3309. Breach of agreement to sell personal property paid for.
§ 3310. Breach of agreement to pay for personal property sold.
§ 3311. Breach of agreement to buy personal property.
§ 3312. Breach of warranty of title to personal property.
§ 3313. Breach of warranty of quality of personal property.
§ 3314. Breach of warranty of quality for special purpose.
§ 3315. Breach of carrier's obligation to receive goods, etc.
§ 3316. Breach of carrier's obligation to deliver.
§ 3317. Carrier's delay.
§ 3318. Breach of warranty of authority.
§ 3319. Breach of promise of marriage.

§ 3300. MEASURE OF DAMAGES FOR BREACH OF CONTRACT. For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 266.

§ 3301. **DAMAGES MUST BE CERTAIN.** No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

History: Enacted March 21, 1872.

§ 3302. **BREACH OF CONTRACT TO PAY LIQUIDATED SUM.** The detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon.

History: Enacted March 21, 1872.

§ 3303. **DISHONOR OF FOREIGN BILLS OF EXCHANGE.** For the dishonor of foreign bills of exchange the damages are prescribed by sections thirty-two hundred and thirty-five, thirty-two hundred and thirty-seven, and thirty-two hundred and thirty-eight.

History: Enacted March 21, 1872.

§ 3304. **DETRIMENT CAUSED BY BREACH OF COVENANT OF SEIZIN, ETC., WHAT IS.** The detriment caused by the breach of a covenant of "seizin," of "right to convey," of "warranty," or of "quiet enjoyment," in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor; or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property;

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years;

3. Any expenses properly incurred by the covenantee in defending his possession.

History: Enacted March 21, 1872.

§ 3305. **DETRIMENT CAUSED BY BREACH OF COVENANT AGAINST ENCUMBRANCES, IS WHAT.** The detriment caused by the breach of a covenant against encumbrances in a grant of an estate in real property is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount.

History: Enacted March 21, 1872.

§ 3306. **BREACH OF AGREEMENT TO CONVEY REAL PROPERTY.** The detriment caused by the breach of an agreement to convey an estate in real property, is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

History: Enacted March 21, 1872.

§ 3307. **BREACH OF AGREEMENT TO BUY REAL PROPERTY.** The detriment caused by the breach of an agreement to purchase an estate in real property, is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him.

History: Enacted March 21, 1872.

§ 3308. **BREACH OF AGREEMENT TO SELL PERSONAL PROPERTY, NOT PAID FOR.** The detriment

caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

History: Enacted March 21, 1872.

§ 3309. **BREACH OF AGREEMENT TO SELL PERSONAL PROPERTY PAID FOR.** The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of wrongful conversion.

History: Enacted March 21, 1872.

§ 3310. **BREACH OF AGREEMENT TO PAY FOR PERSONAL PROPERTY SOLD.** The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price.

History: Enacted March 21, 1872.

§ 3311. **BREACH OF AGREEMENT TO BUY PERSONAL PROPERTY.** The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be:

1. If the property has been resold, pursuant to section three thousand and forty-nine, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section three thousand and forty-nine, the excess, if any, of the amount due from the buyer, under the con-

tract, over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

History: Enacted March 21, 1872.

§ 3312. **BREACH OF WARRANTY OF TITLE TO PERSONAL PROPERTY.** The detriment caused by the breach of a warranty of the title of personal property sold, is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner.

History: Enacted March 21, 1872.

§ 3313. **BREACH OF WARRANTY OF QUALITY OF PERSONAL PROPERTY.** The detriment caused by the breach of a warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

History: Enacted March 21, 1872.

§ 3314. **BREACH OF WARRANTY OF QUALITY FOR SPECIAL PURPOSE.** The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose, is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

History: Enacted March 21, 1872.

§ 3315. **BREACH OF CARRIER'S OBLIGATION TO RECEIVE GOODS, ETC.** The detriment caused by the

breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

History: Enacted March 21, 1872.

§ 3316. **BREACH OF CARRIER'S OBLIGATION TO DELIVER.** The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

History: Enacted March 21, 1872.

§ 3317. **CARRIER'S DELAY.** The detriment caused by a carrier's delay in the delivery of freight, is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered, and the day of its actual delivery.

History: Enacted March 21, 1872.

§ 3318. **BREACH OF WARRANTY OF AUTHORITY.** The detriment caused by the breach of a warranty of an agent's authority, is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

History: Enacted March 21, 1872.

§ 3319. **BREACH OF PROMISE OF MARRIAGE.** The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

History: Enacted March 21, 1872.

ARTICLE II.

DAMAGES FOR WRONGS.

§ 3333. Breach of obligation other than contract.
§ 3334. Wrongful occupation of real property.
§ 3335. Wilful holding over.
§ 3336. Conversion of personal property.
§ 3337. Same. [Application to benefit of owner.]
§ 3338. Damages of lienor.
§ 3339. Seduction.
§ 3340. Injuries to animals.
§ 3341. Same. [Sheep-killing dogs.]

§ 3333. BREACH OF OBLIGATION OTHER THAN CONTRACT. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

History: Enacted March 21, 1872

§ 3334. WRONGFUL OCCUPATION OF REAL PROPERTY. The detriment caused by the wrongful occupation of real property, in cases not embraced in sections thirty-three hundred and thirty-five, thirty-three hundred and forty-four, and thirty-three hundred and forty-five of this code, or section eleven hundred and seventy-four of the code of civil procedure, is deemed to be the value of the use of the property for the time of such occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

History: Enacted March 21, 1872

§ 3335. **WILFUL HOLDING OVER.** For wilfully holding over real property, by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

History: Enacted March 21, 1872

§ 3336. **CONVERSION OF PERSONAL PROPERTY.** The detriment caused by the wrongful conversion of personal property is presumed to be:

1. The value of the property at the time of the conversion, with the interest from that time, or, where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and

2. A fair compensation for the time and money properly expended in pursuit of the property.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 266; January 22, 1878, Code Amdts. 1877-8, p. 90.

§ 3337. **SAME. [APPLICATION TO BENEFIT OF OWNER.]** The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

History: Enacted March 21, 1872

§ 3338. **DAMAGES OF LIENOR.** One having a mere lien on personal property, cannot recover greater damages for its conversion, from one having a right thereto superior

to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section thirty-three hundred and thirty-six for loss of time and expenses.

History: Enacted March 21, 1872

§ 3339. **SEDUCTION.** The damages for seduction rest in the sound discretion of the jury.

History: Enacted March 21, 1872

§ 3340. **INJURIES TO ANIMALS.** For wrongful injuries to animals being subjects of property, committed wilfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

History: Enacted March 21, 1872

§ 3341. **SAME. [SHEEP-KILLING DOGS.]** The owner, possessor, or harborer of any dog or other animal, that shall kill, worry, or wound any sheep, angora goat, or cashmere goat, or poultry, shall be liable to the owner of the same for the damages and costs of suit, to be recovered in any court of competent jurisdiction:

1. In the prosecution of actions under the provisions of this chapter, it shall not be necessary for the plaintiff to show that the owner, possessor, or harborer of such dog or other animal, had knowledge of the fact that such dog or other animal would kill, wound or worry sheep, goats, or poultry.

2. Any person on finding any dog or dogs, or other animal, not on the premises of the owner or possessor of such dog or dogs, or other animal, worrying, wounding, or killing any sheep, angora or cashmere goats, may, at the time of finding such dog or dogs, or other animal, kill the same, and the owner or owners thereof shall sustain no action for damages against any person so killing such dog or dogs, or other animal.

History: Enacted March 13, 1883, Stats. and Amdts. 1883, p. 283; amended February 27, 1903, Stats. and Amdts. 1903, p. 54.

ARTICLE III.

PENAL DAMAGES.

§ 3344. Failure to quit, after notice.
§ 3345. Tenant wilfully holding over.
§ 3346. Injuries to trees, etc.
§ 3346a. Damages for firing woods.
§ 3347. Injuries inflicted in a duel.
§ 3348. Same.

§ 3344. **FAILURE TO QUIT, AFTER NOTICE.** If any tenant give notice of his intention to quit the premises, and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

History: Enacted March 21, 1872

§ 3345. **TENANT WILFULLY HOLDING OVER.** If any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and one month's notice, in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

History: Enacted March 21, 1872

§ 3346. **INJURIES TO TREES, ETC.** For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority

of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

History: Enacted March 21, 1872

§ 3346a. **DAMAGES FOR FIRING WOODS.** Every person negligently setting fire to his own woods, or negligently suffering any fire to extend beyond his own land, is liable in treble damages to the party injured.

History: Enacted by Code Commission, Act March 16, 1901, Stats. and Amdts 1900-1, p. 421, held unconstitutional, see history, § 4 ante; re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 621, incorporating into the Civil Code the principle declared in Pol. Code § 3344.

§ 3347. **INJURIES INFLICTED IN A DUEL.** If any person slays or permanently disables another person in a duel in this state, the slayer must provide for the maintenance of the widow or wife of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court.

History: Enacted March 21, 1872, based on Stats. 1855, p. 152.

§ 3348. **SAME.** If any person slays or permanently disables another person in a duel in this state, the slayer is liable for and must pay all debts of the person slain or permanently disabled.

History: Enacted March 21, 1872

ARTICLE IV.

GENERAL PROVISIONS.

§ 3353. Value, how estimated in favor of seller.
§ 3354. Value, how estimated in favor of buyer.
§ 3355. Property of peculiar value.
§ 3356. Value of thing in action.
§ 3357. Damages allowed in this chapter, exclusive of others.
§ 3358. Limitation of damages.
§ 3359. Damages to be reasonable.
§ 3360. Nominal damages.

§ 3353. VALUE, HOW ESTIMATED IN FAVOR OF SELLER. In estimating damages, the value of property to a seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

History: Enacted March 21, 1872

§ 3354. VALUE, HOW ESTIMATED IN FAVOR OF BUYER. In estimating damages, except as provided by sections thirty-three hundred and fifty-five and thirty-three hundred and fifty-six, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

History: Enacted March 21, 1872

§ 3355. **PROPERTY OF PECULIAR VALUE.** Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a wilful wrong-doer.

History: Enacted March 21, 1872

§ 3356. **VALUE OF THING IN ACTION.** For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

History: Enacted March 21, 1872; amended April 30, 1874, Code Amdts. 1873-4, p. 266.

§ 3357. **DAMAGES ALLOWED IN THIS CHAPTER, EXCLUSIVE OF OTHERS.** The damages prescribed by this chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

History: Enacted March 21, 1872

§ 3358. **LIMITATION OF DAMAGES.** Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in sections thirty-three hundred and nineteen, thirty-three hundred and thirty-nine, and thirty-three hundred and forty.

History: Enacted March 21, 1872

§ 3359. **DAMAGES TO BE REASONABLE.** Damages must, in all cases, be reasonable, and where an obligation

of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

History: Enacted March 21, 1872

§ 3360. **NOMINAL DAMAGES.** When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

History: Enacted March 21, 1872

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

Chapter I. General Principles, §§ 3366-3369.
II. Specific Relief, §§ 3375-3415.
III. Preventive Relief, §§ 3420-3423.

CHAPTER I.

GENERAL PRINCIPLES.

§ 3366. Specific relief, etc., when allowed.
§ 3367. Specific relief, how given.
§ 3368. Preventive relief, how given.
§ 3369. Not to enforce penalty, etc.

§ 3366. SPECIFIC RELIEF, ETC., WHEN ALLOWED. Specific or preventive relief may be given as provided by the laws of this state.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 421, held unconstitutional, see history, § 4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 622, enlarging the scope of the section.

§ 3367. SPECIFIC RELIEF, HOW GIVEN. Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant;

2. By compelling a party himself to do that which ought to be done; or,

3. By declaring and determining the rights of parties, otherwise than by an award of damages.

History: Enacted March 21, 1872

§ 3368. **PREVENTIVE RELIEF, HOW GIVEN.** Preventive relief is given by prohibiting a party from doing that which ought not to be done.

History: Enacted March 21, 1872

§ 3369. **NOT TO ENFORCE PENALTY, ETC.** Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case.

History: Enacted March 21, 1872

CHAPTER II.

SPECIFIC RELIEF.

Article I. Possession of Real Property, § 3375.
II. Possession of Personal Property, §§ 3379, 3380.
III. Specific Performance of Obligations, §§ 3384-3395.
IV. Revision of Contracts, §§ 3399-3402.
V. Recission of Contracts, §§ 3406-3408.
VI. Cancelation of Instruments, §§ 3412-3415.

ARTICLE I.

POSSESSION OF REAL PROPERTY.

§ 3375. Judgment for possession or title.

§ 3375. JUDGMENT FOR POSSESSION OR TITLE. A person entitled to specific real property, by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the code of civil procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property.

History: Enacted March 21, 1872.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

§ 3379. Judgment for delivery.
§ 3380. When holder may be compelled to deliver.

§ 3379. **JUDGMENT FOR DELIVERY.** A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the code of civil procedure.

History: Enacted March 21, 1872.

§ 3380. **WHEN HOLDER MAY BE COMPELLED TO DELIVER.** Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 266.

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

§ 3384. In what cases compelled.
§ 3385. Remedy mutual [repealed].
§ 3386. No remedy unless mutual.
§ 3387. Distinction between real and personal property.
§ 3388. Contract signed by one party only, may be enforced by other.
§ 3389. Liquidation of damages not a bar to specific performance.
§ 3390. What cannot be specifically enforced.
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§ 3392. What parties cannot have specific performance in their favor.
§ 3393. Specific performance not required when oppressive [repealed].
§ 3394. Agreement to sell property by one who has no title.
§ 3395. Relief against parties claiming under person bound to perform.

§ 3384. **IN WHAT CASES COMPELLED.** Except as otherwise provided in this article, the specific performance of an obligation may be compelled.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 266.

§ 3385. **REMEDY MUTUAL** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 267.

§ 3386. **NO REMEDY UNLESS MUTUAL.** Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

History: Enacted March 21, 1872.

§ 3387. **DISTINCTION BETWEEN REAL AND PERSONAL PROPERTY.** It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

History: Enacted March 21, 1872.

§ 3388. **CONTRACT SIGNED BY ONE PARTY ONLY, MAY BE ENFORCED BY OTHER.** A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

History: Enacted March 21, 1872

§ 3389. **LIQUIDATION OF DAMAGES NOT A BAR TO SPECIFIC PERFORMANCE.** A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

History: Enacted March 21, 1872

§ 3390. **WHAT CANNOT BE SPECIFICALLY ENFORCED.** The following obligations cannot be specifically enforced:

1. An obligation to render personal service;

2. An obligation to employ another in personal service;

3. An agreement to submit a controversy to arbitration;

4. An agreement to perform an act which the party has not power lawfully to perform when required to do so;

5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,

6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

History: Enacted March 21, 1872

§ 3391. **WHAT PARTIES CANNOT BE COMPELLED TO PERFORM.** Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;

2. If it is not, as to him, just and reasonable;

3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,

4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

History: Enacted March 21, 1872.

§ 3392. **WHAT PARTIES CANNOT HAVE SPECIFIC PERFORMANCE IN THEIR FAVOR.** Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial, or capable of being fully compensated, in which case specific performance may be compelled, upon full compensation being made for the default.

History: Enacted March 21, 1872.

§ 3393. **SPECIFIC PERFORMANCE NOT REQUIRED WHEN OPPRESSIVE** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 267.

§ 3394. **AGREEMENT TO SELL PROPERTY BY ONE WHO HAS NO TITLE.** An agreement for the sale of

property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

History: Enacted March 21, 1872.

§ 3395. **RELIEF AGAINST PARTIES CLAIMING UNDER PERSON BOUND TO PERFORM.** Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or encumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

History: Enacted March 21, 1872.

ARTICLE IV.

REVISION OF CONTRACTS.

§ 3399. When contract may be revised.
§ 3400. Presumption as to intent of parties.
§ 3401. Principles of revision.
§ 3402. Enforcement of revised contract.

§ 3399. WHEN CONTRACT MAY BE REVISED. When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

History: Enacted March 21, 1872.

§ 3400. PRESUMPTION AS TO INTENT OF PARTIES. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

History: Enacted March 21, 1872.

§ 3401. PRINCIPLES OF REVISION. In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

History: Enacted March 21, 1872.

§ 3402. ENFORCEMENT OF REVISED CONTRACT. A contract may be first revised and then specifically enforced.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 422, held unconstitutional, see history, § 4 ante.

ARTICLE V.

RESCISSION OF CONTRACTS.

§ 3406. When rescission may be adjudged.
§ 3407. Rescission for mistake.
§ 3408. Court may require party rescinding to do equity.

§ 3406. WHEN RESCISSION MAY BE ADJUDGED. The rescission of a written contract may be adjudged, on the application of a party aggrieved:

1. In any of the cases mentioned in section sixteen hundred and eighty-nine; or,

2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,

3. When the public interest will be prejudiced by permitting it to stand.

History: Enacted March 21, 1872; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 422, held unconstitutional, see history, § 4 ante.

§ 3407. RESCISSION FOR MISTAKE. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

History: Enacted March 21, 1872.

§ 3408. COURT MAY REQUIRE PARTY RESCINDING TO DO EQUITY. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

History: Enacted March 21, 1872.

ARTICLE VI.

CANCELATION OF INSTRUMENTS.

§ 3412. When cancelation may be ordered.
§ 3413. Instrument obviously void.
§ 3414. Cancelation in part.
§ 3415. Re-issuance, etc., of lost private documents or instruments.

§ 3412. WHEN CANCELATION MAY BE ORDERED. A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

History: Enacted March 21, 1872; amended by Code Commission, Act March 6, 1901, Stats. and Amdts. 1900-1, p. 422, held unconstitutional, see history, § 4 ante.

§ 3413. INSTRUMENT OBVIOUSLY VOID. An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of the last section.

History: Enacted March 21, 1872.

§ 3414. CANCELATION IN PART. Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue.

History: Enacted March 21, 1872.

§ 3415. RE-ISSUANCE, ETC., OF LOST PRIVATE DOCUMENTS OR INSTRUMENTS. An action may be

maintained by any person interested in any private document or instrument in writing, which has been lost, destroyed or damaged by conflagration or other public calamity, to prove, establish, compel the re-issuance, re-execution, and re-acknowledgment of such document or instrument. If such document or instrument be a negotiable instrument, the court must compel the person in whose favor it is drawn to give a bond executed by himself and two sufficient sureties to indemnify the person re-issuing, re-executing, or re-acknowledging the same against any lawful claim thereon.

History: Enacted June 18, 1906, Stats. and Amdts. extraordinary session 1906, p. 86, Kerr's Stats. and Amdts. 1906-7, p. 429. **In effect** immediately.

CHAPTER III.

PREVENTIVE RELIEF.

§ 3420. Preventive relief, how granted.
§ 3421. Provisional injunctions.
§ 3422. Injunction, when allowed.
§ 3423. Injunction, when not allowed.

§ 3420. **PREVENTIVE RELIEF, HOW GRANTED.** Preventive relief is granted by injunction, provisional or final.

History: Enacted March 21, 1872.

§ 3421. **PROVISIONAL INJUNCTIONS.** Provisional injunctions are regulated by the code of civil procedure.

History: Enacted March 21, 1872.

§ 3422. **INJUNCTION, WHEN ALLOWED.** Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief;

2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,

4. Where the obligation arises from a trust.

History: Enacted March 21, 1872.

§ 3423. **INJUNCTION, WHEN NOT ALLOWED.** An injunction cannot be granted:

1. To stay a judicial proceeding pending at the commence-

ment of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

2. To stay proceedings in a court of the United States.

3. To stay proceedings in another state upon a judgment of a court of that state.

4. To prevent the execution of a public statute, by officers of the law, for the public benefit.

5. To prevent the breach of a contract, the performance of which would not be specifically enforced.

6. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

7. To prevent a legislative act by a municipal corporation.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 267.

PART II.

SPECIAL RELATIONS OF DEBTOR OVER CREDITOR.

Ttile I. General Principles, §§ 3429-3433.
II. Fraudulent Instrument and Transfers, §§ 3439-3442.
III. Assignments for the Benefit of Creditors, §§ 3449-3473.

TITLE I.

GENERAL PRINCIPLES.

§ 3429. Who is a debtor.
§ 3430. Who is a creditor.
§ 3431. Contracts of debtor are valid.
§ 3432. Payments in preference.
§ 3433. Relative rights of different creditors.

§ 3429. **WHO IS A DEBTOR.** A debtor, within the meaning of this title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

History: Enacted March 21, 1872.

§ 3430. **WHO IS A CREDITOR.** A creditor, within the meaning of this title, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

History: Enacted March 21, 1872.

§ 3431. **CONTRACTS OF DEBTOR ARE VALID.** In the absence of fraud, every contract of a debtor is valid

against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

History: Enacted March 21, 1872.

§ 3432. **PAYMENTS IN PREFERENCE.** A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

History: Enacted March 21, 1872.

§ 3433. **RELATIVE RIGHTS OF DIFFERENT CREDITORS.** Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

History: Enacted March 21, 1872.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

§ 3439. Transfers, etc., with intent to defraud creditors.
§ 3440. Certain transfers presumed fraudulent.
§ 3441. Creditor's right must be judicially ascertained.
§ 3442. Question of fraud, how determined.

§ 3439. **TRANSFERS, ETC., WITH INTENT TO DEFRAUD CREDITORS.** Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

History: Enacted March 21, 1872.

§ 3440. **CERTAIN TRANSFERS PRESUMED FRAUDULENT.** Every transfer of personal property, other than a thing in action, or a ship or cargo at sea or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia, is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or encumbrancers in good faith subsequent to the transfer;

[Exception.] Provided, however, that the provisions of

this section shall not apply to the transfers of wines in the wineries or wine cellars of the makers or owners thereof, or other persons having possession, care, and control of the same, and the pipes, casks, and tanks in which the said wines are contained, which transfers shall be made in writing, and certified and verified in the same form as provided for chattel mortgages and which shall be recorded in the book of miscellaneous records in the office of the county recorder of the county in which the same are situated;

[Public recordation required.] Provided, also, that the sale, transfer, or assignment of a stock in trade (or of such a quantity of a stock in trade as to be substantially a whole) in bulk, or in any manner otherwise than in the ordinary course of trade and in the regular and usual practice and method of business of the vendor, transferrer, or assignor, will be conclusively presumed to be fraudulent and void as against the existing creditors of the vendor, transferrer, or assignor, unless at least five days before the consummation of such sale, transfer, or assignment the vendor, transferrer, or assignor, or the intended vendee, transferee, or assignee shall record in the office of the county recorder in the county or counties in which the said stock in trade is situated, a notice of said intended sale, transfer, or assignment, stating the name and address of the intended vendor, transferrer, or assignor, and the name and address of the intended vendee, transferee, or assignee, and a general statement of the character of the property or merchandise intended to be sold, assigned, or transferred, and the date when, and the place where, the purchase price, if any there be, is to be paid;

[Sales at public auction.] Provided, nevertheless, that if such intended sale is to be at public auction the notice above required to be recorded shall state that fact, the time, terms, and place of said sale, the names and addresses of the vendor and auctioneer, and a general statement of the character

of the property or merchandise intended to be sold; but such sale shall in no event occur within five days of the date of recordation of said notice;

[Transfers under order of court.] Provided further, that the provisions of this section shall not apply or extend to any sale, transfer or assignment made under the direction or order of a court of competent jurisdiction, or by any executor, administrator, guardian, receiver, or other officer or person acting in the regular and proper discharge of official duty, or in the discharge of any trust imposed upon him by law, nor to any transfer or assignment made for the benefit of creditors generally, nor to any sale, transfer or assignment of any property exempt from execution.

History: Enacted March 21, 1872; amended March 12, 1895, Stats. and Amdts. 1895, p. 47; March 10, 1903, Stats. and Amdts. 1903, pp. 111-112.

§ 3441. **CREDITOR'S RIGHT MUST BE JUDICIALLY ASCERTAINED.** A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

History: Enacted March 21, 1872.

§ 3442. **QUESTION OF FRAUD, HOW DETERMINED.** In all cases arising under section twelve hundred and twenty-seven, or under the provisions of this title, except as otherwise provided in section thirty-four hundred and forty, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration; provided, however, that any transfer or encumbrance of property made or given voluntarily, or

without a valuable consideration, by a party while insolvent or in contemplation of insolvency, shall be fraudulent, and void as to existing creditors.

History: Enacted March 21, 1872; amended March 26, 1895, Stats. and Amdts. 1895, pp. 154-5; amended by Code Commission, Act March 6, 1901, Stats. and Amdts. 1900-1, p. 422, held unconstitutional, see history, § 4 ante.

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

§ 3449. When debtor may execute assignment.
§ 3450. Insolvency, what.
§ 3451. Certain transfers not affected.
§ 3452. What debts may be secured.
§ 3453. What preferences may be given [repealed].
§ 3454. Preference must be absolute [repealed].
§ 3455. Certain rights not affected by preferences in assignment [repealed].
§ 3456. Joint and separate debts [repealed].
§ 3457. Assignment, when void.
§ 3458. The instrument of assignment.
§ 3459. Compliance with provisions of last section necessary to validity of assignment.
§ 3460. Assignee takes, subject to rights of third parties.
§ 3461. Inventory required.
§ 3462. Verification of inventory.
§ 3463. Recording assignment and filing inventory.
§ 3464. Same. More than one assignor recording assignment.
§ 3465. Assignment, when void.
§ 3466. Assignment of real property.
§ 3467. Bond of assignees.
§ 3468. Conditions of disposal and conversion.
§ 3469. Accounting of assignee.
§ 3470. Property exempt.
§ 3471. Compensation.
§ 3472. Assignees protected for acts done in good faith.
§ 3473. Assent of creditor necessary to modification of assignment.

§ 3449. WHEN DEBTOR MAY EXECUTE ASSIGNMENT. An insolvent debtor may in good faith execute an assignment of property in trust for the satisfaction of his creditors, in conformity to the provisions of this chapter; subject, however, to the provisions of this code relative to trusts and fraudulent transfers, and to the restrictions im-

posed by law upon assignments by special partnerships, by corporations, or by other specific classes or persons.

[Form of assignment.] Every such assignment shall contain a list of the names of the creditors of the assignor, and their places of residence and amounts of their respective demands, and the amounts and nature of any security therefor, and shall, subject to the other provisions of this section, be made to the sheriff of the county, or city and county, wherein the assignor resides, if the assignor resides within this state; or in case the assignor resides out of this state, then to the sheriff of the county, or city and county, wherein the property assigned, or some of it, is situated; but when the assignor resides out of the state, an assignment made as herein provided may, by its terms, transfer any property of the assignor in this state.

[Sheriff to take possession—Notice to creditors.] The sheriff shall forthwith take possession of all the property so assigned to him, and keep the same till delivered by him, as hereinafter provided. When the assignment has been made, as herein provided, the sheriff shall immediately, by mail, notify the creditors named in the assignment, at their places of residence as given therein, to meet at his office on a day and hour to be appointed by him, of not less than eight nor more than ten days from the date of the delivery of the assignment to him, for the purpose of electing one or more assignees, as they may determine, in the place and stead of the said sheriff in the premises, and shall also publish a notice of such meeting, and the purpose thereof, at least once before such meeting, in some newspaper published in his county, or city and county.

[Notice to contain demand on creditors.] The notice so to be mailed shall also contain a statement of the amount of the demand of the creditor, and the amount and nature of any security therefor, as set forth in the assignment; and if any creditor shall not find the amount of his claim to be correctly so stated, he may file with said sheriff, at or before

such meeting, a statement, under oath, of his demand, and such statement shall, for the purpose of voting as hereinafter provided, be accepted by said sheriff as correct; and when no such statement is filed, the statement of amount as set forth in the assignment shall be accepted by the sheriff as correct. No creditor having a mortgage or pledge of real or personal property of the debtor, or lien thereon, for securing the payment of a debt owing to him from the debtor, shall be allowed to vote any part of his claim at such meeting of creditors, unless he shall have first conveyed, released, or delivered up his said security to said sheriff, for the benefit of all creditors of said assignor. At such meeting the sheriff shall preside, and a majority in amount of demands present or represented by proxy shall control all questions and decisions.

The creditors may adjourn such meeting from time to time, and may vote on all questions either in person or by proxy signed and acknowledged before any officer authorized to take acknowledgments, and filed with the sheriff. At such a meeting, or any adjournment thereof, the creditors may elect one or more assignees from their own number, in the place and stead of the sheriff, and the person or persons so elected shall afterwards be the assignee or assignees under the provisions of this title; and the sheriff, by transfer in writing, acknowledged as required by section three thousand four hundred and fifty-eight, shall at once assign to such elected assignee or assignees, upon the trusts in this title provided, all the property so assigned to him, and deliver possession thereof. All recitals in such assignment by said sheriff of notices of such meeting, and the holding thereof, and of the due election of such assignee or assignees, shall be prima facie proof of the facts recited.

[Sheriff's fees and expenses.] The sheriff shall, before the delivery of such assignment, be paid the expenses incurred by him, and fees in such amount as would by law be collectable if the property assigned had been levied upon

and safely kept under attachment. Thereupon, and after the record of such last-named assignment, as in this title provided, such elected assignee or assignees shall take, and hold, and dispose of all such property and its proceeds, upon the trusts and conditions and for the purposes in this title provided.

History: Enacted March 21, 1872; amended March 7, 1889, Stats. and Amdts. 1889, pp. 80-2; March 26, 1895, Stats. and Amdts. 1895, pp. 82-4.

§ 3450. **INSOLVENCY, WHAT.** A debtor is insolvent, within the meaning of this title, when he is unable to pay his debts from his own means, as they become due.

History: Enacted March 21, 1872.

§ 3451. **CERTAIN TRANSFERS NOT AFFECTED.** The provisions of this title do not prevent a person residing in another state or country from making there, in good faith, and without intent to evade the laws of this state, a transfer of property situated within it; but such person cannot make a general assignment of property situated in this state for the satisfaction of all his creditors, except as in this title provided; nor do the provisions of this title affect the power of a person, although insolvent, and whether residing within or without this state, to transfer property in this state, in good faith to a particular creditor, or creditors, or to some other person or persons in trust for such particular creditor or creditors for the purpose of paying or securing the whole or part of a debt owing to such creditor or creditors, whether in his or their own right or otherwise.

History: Enacted March 21, 1872; amended March 8, 1889, Stats. and Amdts. 1889, p. 82; amended by Code Commission, Act March 16, 1901, Stats. and Amdts. 1900-1, p. 422, held unconstitutional, see history, §4 ante; amendment re-enacted March 21, 1905, Stats. and Amdts. 1905, p. 622.

§ 3452. **WHAT DEBTS MAY BE SECURED.** An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

History: Enacted March 21, 1872.

§ 3453. **WHAT PREFERENCES MAY BE GIVEN** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 267.

§ 3454. **PREFERENCE MUST BE ABSOLUTE** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 267.

§ 3455. **CERTAIN RIGHTS NOT AFFECTED BY PREFERENCES IN ASSIGNMENT** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 267.

§ 3456. **JOINT AND SEPARATE DEBTS** [repealed].

History: Enacted March 21, 1872; repealed March 30, 1874, Code Amdts. 1873-4, p. 267.

§ 3457. **ASSIGNMENT, WHEN VOID.** An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

1. If it give a preference of one debt or class of debts over another.

2. If it tend to coerce any creditor to release or compromise his demand.

3. If it provide for the payment of any claim known to the assignor to be false or fraudulent; or for the payment of

more upon any claim than is known to be justly due from the assignor.

4. If it reserve any interest in the assigned property, or in any part theerof, to the assignor, or for his benefit, before all his existing debts are paid.

5. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.

6. If it exempt him from liability for neglect of duty or misconduct.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, pp. 267-8.

§ 3458. **THE INSTRUMENT OF ASSIGNMENT.** An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized in writing, and the transfer by the sheriff must also be in writing, subscribed by the sheriff in his official capacity. Both such assignment and such transfer must be acknowledged, or proved and certified, in the mode prescribed by the chapter on recording transfers of real property, and be recorded as required by sections thirty-four hundred and sixty-three and thirty-four hundred and sixty-four; but recording in one county constitutes a compliance with the following section.

History: Enacted March 21, 1872; amended March 7, 1889, Stats. and Amdts. 1889, p. 82.

§ 3459. **COMPLIANCE WITH PROVISIONS OF LAST SECTION NECESSARY TO VALIDITY OF ASSIGNMENT.** Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

History: Enacted March 21, 1872.

§ 3460. **ASSIGNEE TAKES, SUBJECT TO RIGHTS OF THIRD PARTIES.** An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

History: Enacted March 21, 1872.

§ 3461. **INVENTORY REQUIRED.** Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by section thirty-four hundred and sixty-three, a full and true inventory, showing:

1. All the creditors of the assignor;
2. The place of residence of each creditor, if known to the assignor; or if not known, that fact must be stated;
3. The sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;
4. The true consideration of the liability in each case, and the place where it arose;
5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;
6. All property of the assignor at the date of the assignment, which is exempt by law from execution; and,
7. All of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt, and the encumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

History: Enacted March 21, 1872.

§ 3462. **VERIFICATION OF INVENTORY.** An affidavit must be made by every assignor executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the ef-

fect that the same is in all respects just and true according to the best of such assignor's knowledge and belief. If the assignor neglects or refuses to make and file such inventory and affidavit within said twenty days, the assignment shall not, for that reason, be affected in any way, but in that event the assignee or assignees elected by the creditors shall within twenty days thereafter make and file in the office of the county recorder where the assignment is first recorded, a verified inventory of all assets received by them;

[Citation by court to appear, etc.] and such assignee or assignees may at any time, or from time to time, after the transfer to them by the sheriff, by petition to the superior court of the county[,] or city and county[,] where the assignment is first recorded, cause the assignor, by order or citation[,] to appear before said court, or a commissioner or referee to be appointed by it, at a time and place within the county, or city and county, to be designated in the order or citation, to be examined touching the matters mentioned in section three thousand four hundred and sixty-one, and any other matters relative to the assignment, and to have with him all books of account, vouchers, and papers relating to the assigned property; and such court may by its order require the surrender to such assignee or assignees of such books, vouchers, and papers, to be by them retained until their trust is fully completed and performed.

History: Enacted March 21, 1872; amended March 7, 1889, Stats. and Amdts. 1889, pp. 82-3.

§ 3463. **RECORDING ASSIGNMENT AND FILING INVENTORY.** An assignment for the benefit of creditors must be recorded, and the inventory required by section thirty-four hundred and sixty-one filed with the county recorder of the county in which the assignor resided at the date of the assignment; or, if he did not then reside in this state, with the recorder of the county in which his principal place of business was then situated; or, if he had not then a

residence or place of business in this state, with the recorder of the county in which the principal part of the assigned property was then situated.

History: Enacted March 21, 1872.

§ 3464. **SAME. MORE THAN ONE ASSIGNOR RECORDING ASSIGNMENT.** If an assignment for the benefit of creditors is executed by more than one assignor, it may be recorded, and a copy of the inventory required by section thirty-four hundred and sixty-one may be filed with the recorder of the county in which any of the assignors resided at its date, or in which any of them, not then residing in this state, had then a place of business.

History: Enacted March 21, 1872.

§ 3465. **ASSIGNMENT, WHEN VOID.** An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers and encumbrances in good faith[,] and for value[,] unless it is recorded as provided in this title, and unless either the inventory required by section three thousand four hundred and sixty-one, or the inventory required of the assignee or assignees by section three thousand four hundred and sixty-two [,] is filed in the manner provided in this title and within the time designated.

History: Enacted March 21, 1872; amended February 25, 1878, Code Amdts. 1877-8, p. 90; March 7, 1889, Stats. and Amdts. 1889, p. 83.

§ 3466. **ASSIGNMENT OF REAL PROPERTY.** Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of article four of the chapter on recording transfers, as well as to those of this title.

History: Enacted March 21, 1872.

§ 3467. **BOND OF ASSIGNEES.** No bond shall be given by the sheriff, but he shall be liable on his official bond for the care and custody of the property while in his possession. Within forty days after date of the transfer by the sheriff, the assignee must enter into a bond to the people of this state in such amount as may be fixed by a judge of the superior court of the county, or city and county, in which an inventory in accordance with the provisions of this title is filed, with sufficient sureties to be approved by such judge and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the inventory; and any assignee failing to comply with the provisions of this section may be removed by the above-named superior court on petition of the assignor or any creditor, and his successor appointed by such court.

History: Enacted March 21, 1872; amended February 15, 1883, Stats. and Amdts. 1883, p. 2; March 7, 1889, Stats. and Amdts. 1889, p. 83.

§ 3468. **CONDITIONS OF DISPOSAL AND CONVERSION.** Until a verified inventory has been made and filed, either by the assignor or assignee, as required by the provisions of this title, and the assignee has given the bond required by the last section, such assignee has no authority to dispose of the property of the estate, or any part of it (except in the case of perishable property, which in his discretion he may dispose of at any time, and receive the proceeds of sale thereof); nor has he power to convert the property, or the proceeds of any sale of perishable property, to the purposes of the trust.

[Publication by assignee.] Within ten days after the filing of his bond, the assignee must commence the publication (and such publication shall continue at least once a week for four weeks), in some newspaper published in the county, or city and county, where the inventory is filed, of a notice to

creditors of the assignor, stating the fact and date of the assignment, and requiring all persons having claims against the assignor to exhibit them, with the necessary vouchers, and verified by the oath of the creditor, to the assignee, at his place of residence or business, to be specified in the notice; and he shall also, within ten days after the first publication of said notice, mail a copy of such notice to each creditor whose name is given in the instrument of assignment, at the address therein given. After such notice is given, a copy thereof, with affidavit of due publication and mailing, must be filed with the county recorder with whom the inventory has been filed, which affidavit shall be prima facie evidence of the facts stated therein.

[Dividends.] At any time, or from time to time, after the expiration of thirty days from the first publication of said notice (provided, the same shall also have been mailed as in this section provided), the assignee may, in his discretion, declare and pay dividends to the creditors whose claims have been presented and allowed. No dividend already declared shall be disturbed by reason of claims being subsequently presented and allowed; but the creditor presenting such claims shall be entitled to a dividend equal to the per cent already declared and paid, before any further dividend is made; provided, however, that there be assets sufficient for that purpose; and provided, that the failure to present such claim shall not have resulted from his own neglect, and he shall attach to such claim a statement, under oath, showing fully why the same was not before presented.

When a creditor has a mortgage or pledge of real or personal property of the debtor, or a lien thereon, for securing the payment of a debt owing to him from the debtor, and shall not have conveyed, released, or delivered up such security to the sheriff, as provided for by section three thousand four hundred and forty-nine of this code, he shall be admitted as a creditor only for the balance of the debt after deducting the value of such mortgage, pledge, or lien, to be

ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the superior court of the county in which the assignment is made shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt.

[Right of redemption.] If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption thereon on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, the creditor shall not be allowed to prove any part of his debt.

History: Enacted March 21, 1872; amended March 7, 1889, Stats. and Amdts. 1889, p. 83; March 26, 1895, Stats. and Amdts. 1895, p. 84.

§ 3469. **ACCOUNTING OF ASSIGNEE.** After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the superior court of the county where the accompanying inventory was filed in the manner prescribed by the insolvent laws of this state.

History: Enacted March 21, 1872; amended February 15, 1883, Stats. and Amdts. 1883, p. 3.

§ 3470. **PROPERTY EXEMPT.** Property exempt from execution, and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

History: Enacted March 21, 1872.

§ 3471. **COMPENSATION.** The elected assignee or assignees for the benefit of creditors shall be entitled to the same commissions on assignments heretofore and hereafter made as are allowed by law to the assignees in insolvency, and the assignment cannot grant more. Such assignee or assignees shall also be entitled to all necessary expenses in the management of their trust.

History: Enacted March 21, 1872; amended March 7, 1889, Stats. and Amdts. 1889, p. 84.

§ 3472. **ASSIGNEES PROTECTED FOR ACTS DONE IN GOOD FAITH.** An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith, in the execution of the trust, merely for the reason that the assignment is afterward adjudged void.

History: Enacted March 21, 1872.

§ 3473. **ASSENT OF CREDITOR NECESSARY TO MODIFICATION OF ASSIGNMENT.** An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the sheriff, or a transfer by the sheriff to the elected assignee or assignees which has been executed and recorded, cannot afterwards be modified or canceled by the parties without the consent of the assignor and of every creditor affected thereby.

History: Enacted March 21, 1872; amended March 7, 1889, Stats. and Amdts. 1889, p. 84.

PART III.

NUISANCE.

Title I. General Principles, §§ 3479-3484.
II. Public Nuisances, §§ 3490-3495.
III. Private Nuisances, §§ 3501-3503.

TITLE I.

GENERAL PRINCIPLES.

§ 3479. Nuisance, what.
§ 3480. Public nuisance.
§ 3481. Private nuisance.
§ 3482. What is not deemed a nuisance.
§ 3483. Successive owners.
§ 3484. Abatement does not preclude action.

§ 3479. NUISANCE, WHAT. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 268; amended by Code Commission Act, March 16, 1901, Stats. and Amdts. 1900-1, p. 420, held unconstitutional, see history, § 4 ante.

§ 3480. PUBLIC NUISANCE. A public nuisance is one which affects at the same time an entire community or neigh-

borhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

History: Enacted March 21, 1872; amended March 30, 1874, Code Amdts. 1873-4, p. 268.

§ 3481. **PRIVATE NUISANCE.** Every nuisance not included in the definition of the last section is private.

History: Enacted March 21, 1872.

§ 3482. **WHAT IS NOT DEEMED A NUISANCE.** Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

History: Enacted March 21, 1872.

§ 3483. **SUCCESSIVE OWNERS.** Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

History: Enacted March 21, 1872.

§ 3484. **ABATEMENT DOES NOT PRECLUDE ACTION.** The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

History: Enacted March 21, 1872.

TITLE II.

PUBLIC NUISANCES.

§ 3490. Lapse of time does not legalize.
§ 3491. Remedies against public nuisance.
§ 3492. How regulated.
§ 3493. Remedies for public nuisance.
§ 3494. Action.
§ 3495. How abated.

§ 3490. LAPSE OF TIME DOES NOT LEGALIZE. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

History: Enacted March 21, 1872.

§ 3491. REMEDIES AGAINST PUBLIC NUISANCE. The remedies against a public nuisance are:

1. Indictment or information;
2. A civil action; or,
3. Abatement.

History: Enacted March 21, 1872; amended March 2, 1880, Code Amdts. 1880 (C. C. pt.) p. 1.

§ 3492. HOW REGULATED. The remedy by indictment or information is regulated by the penal code.

History: Enacted March 21, 1872; amended March 2, 1880, Code Amdts. 1880 (C. C. pt.) p. 1.

Cognate sections to which reference is here made are Penal Code §§ 370-374.

§ 3493. REMEDIES FOR PUBLIC NUISANCE. A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

History: Enacted March 21, 1872.

§ 3494. **ACTION.** A public nuisance may be abated by any public body or officer authorized thereto by law.

History: Enacted March, 21, 1872.

§ 3495. **HOW ABATED.** Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

History: Enacted March 21, 1872.

TITLE III.

PRIVATE NUISANCES.

§ 3501. Remedies for private nuisance.
§ 3502. Abatement, when allowed.
§ 3503. When notice is required.

§ 3501. REMEDIES FOR PRIVATE NUISANCE. The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement.

History: Enacted March 21, 1872.

Cognate section—Nuisance defined, and actions for.—See Code Civ. Proc. § 731 and note.

§ 3502. ABATEMENT, WHEN ALLOWED. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

History: Enacted March 21, 1872.

§ 3503. WHEN NOTICE IS REQUIRED. Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

History: Enacted March 21, 1872; amended by Code Commission Act March 16, 1901, Stats. and Amdts. 1900-1, p. 423, held unconstitutional, see history, § 4 ante.

Notice to successive owner.—See note 14 Am. Dec. 338-341.

PART IV.

MAXIMS OF JURISPRUDENCE.

§ 3509. The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.

History: Enacted March 12, 1872.

§ 3510. When the reason of a rule ceases, so should the rule itself.

History: Enacted March 12, 1872.

§ 3511. Where the reason is the same, the rule should be the same.

History: Enacted March 12, 1872.

§ 3512. One must not change his purpose to the injury of another.

History: Enacted March 12, 1872.

§ 3513. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

History: Enacted March 12, 1872.

§ 3514. One must so use his own rights as not to infringe upon the rights of another.

History: Enacted March 12, 1872.

§ 3515. He who consents to an act is not wronged by it.

History: Enacted March 12, 1872.

§ 3516. Acquiescence in error takes away the right of objecting to it.

History: Enacted March 12, 1872.

§ 3517. No one can take advantage of his own wrong.

History: Enacted March 12, 1872.

§ 3518. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

History: Enacted March 12, 1872.

§ 3519. He who can and does not forbid that which is done on his behalf, is deemed to have bidden it.

History: Enacted March 12, 1872.

§ 3520. No one should suffer by the act of another.

History: Enacted March 12, 1872.

§ 3521. He who takes the benefit must bear the burden.

History: Enacted March 12, 1872.

§ 3522. One who grants a thing is presumed to grant also whatever is essential to its use.

History: Enacted March 12, 1872.

§ 3523. For every wrong there is a remedy.

History: Enacted March 12, 1872.

§ 3524. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

History: Enacted March 12, 1872.

§ 3525. Between rights otherwise equal, the earliest is preferred.

History: Enacted March 12, 1872.

§ 3526. No man is responsible for that which no man can control.

History: Enacted March 12, 1872.

§ 3527. The law helps the vigilant, before those who sleep on their rights.

History: Enacted March 12, 1872.

§ 3528. The law respects form less than substance.

History: Enacted March 12, 1872.

§ 3529. That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

History: Enacted March 12, 1872.

§ 3530. That which does not appear to exist is to be regarded as if it did not exist.

History: Enacted March 12, 1872.

§ 3531. The law never requires impossibilities.

History: Enacted March 12, 1872.

§ 3532. The law neither does not requires idle acts.

History: Enacted March 12, 1872.

§ 3533. The law disregards trifles.

History: Enacted March 12, 1872.

§ 3534. Particular expressions qualify those which are general.

History: Enacted March 12, 1872.

§ 3535. Contemporaneous exposition is in general the best.

History: Enacted March 12, 1872.

§ 3536. The greater contains the less.

History: Enacted March 12, 1872.

§ 3537. Superfluity does not vitiate.

History: Enacted March 12, 1872.

§ 3538. That is certain which can be made certain.

History: Enacted March 12, 1872.

§ 3539. Time does not confirm a void act.

History: Enacted March 12, 1872.

§ 3540. The incident follows the principal, and not the principal the incident.

History: Enacted March 12, 1872.

§ 3541. An interpretation which gives effect is preferred to one which makes void.

History: Enacted March 12, 1872.

§ 3542. Interpretation must be reasonable.

History: Enacted March 12, 1872.

§ 3543. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

History: Enacted March 12, 1872.

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